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LAWS OF ILLINOIS

PERTAINING TO THE JURISDICTION
OF THE

PUBLIC UTILITIES COMMISSION



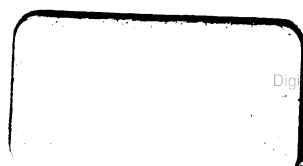
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Ill. Laws, Statutes, &c. Public Utilities Com.

LAWS OF ILLINOIS

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PERTAINING TO THE JURISDICTION
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SPRINGFIELD, ILL.

ILLINOIS STATE JOURNAL Co., STATE PRINTERS.

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PUBLIC UTILITIES IN GENERAL.

I. PUBLIC UTILITIES COMMISSION LAW.

AN ACT to provide for the regulation of public utilities. Approved June 30, 1913
In force January 1, 1914. (L. 1913, p. 459. Hurd's Revised Statutes 1917, Ch.
111 a., Secs. 1-86.)

ARTICLE I.

ORGANIZATION AND POWERS OF THE COMMISSION.

1. Public Utilities Commission—Appointment—Term—Quorum.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That there is hereby created a State Public Utilities Commission consisting of five members. Within thirty days after this Act shall take effect, the Governor shall, with the advice and consent of the Senate, appoint five persons to constitute such Commission, two to serve until the first day of March, 1915, two until the first day of March, 1916, and one until the first day of March, 1917. On or before the first days of March, 1915, 1916 and 1917, respectively, and thereafter as the term of any member expires, the Governor by and with the advice and consent of the Senate, shall appoint one or two members of the Commission, as the case may be to serve for the term of six years from and after the expiration of the term of his predecessor. Each Commissioner shall hold office until his successor shall have been appointed and qualified. Not more than three members of said Commission shall be affiliated with the same political party. The Governor shall from time to time designate the member of the Commission who shall be its chairman.

Every vacancy in the Commission shall be filled for the unexpired portion of the term by appointment by the Governor, by and with the advice and consent of the Senate: *Provided*, that if any vacancy occurs during the recess of the Senate, the Governor may make a temporary appointment until the next meeting of the Senate.

A majority of the Commission shall constitute a quorum to transact business; but no vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the Commission; and every finding, order or decision made by a commissioner, when approved and confirmed by the Commission shall be and be deemed to be the finding, order or decision of the Commission.

NOTE.—The "State Public Utilities Commission" was abolished by the Civil Administrative Code of March 7, 1917, and the "Public Utilities Commission," a division of the Department of Trade and Commerce, was created and invested with the powers and duties of the former Commission. The provisions of the Code affecting this change are as follows:

§ 56. The Department of Trade and Commerce shall have power:

1. To exercise through the Public Utilities Commission created by this Act all the rights powers and duties vested by law in the State Public Utilities Commission, its officers and employees.

§ 57. The Public Utilities Commission created by this Act shall exercise and discharge the rights, powers and duties vested by law in the State Public Utilities Commission under an Act entitled, "An Act to provide for the regulation of public utilities," approved June 30, 1913, in force January 1, 1914, or any future amendments thereto or modifications thereof.

Said Act and all amendments thereto and modifications thereof, if any, shall be administered by the Public Utilities Commission created by this Act, and in its name, without any direction, supervision or control by the Director of Trade and Commerce.

§ 32. Whenever rights, powers and duties, which have heretofore been vested in or exercised by any officer, board, commission, institution or department, or any deputy, inspector or subordinate officer thereof, are, by this Act, transferred, either in whole or in part, to or vested in a department created by this Act, such rights, powers and duties shall be vested in, and shall be exercised by, the department to which the same are hereby transferred, and not otherwise, and every act done in the exercise of such rights, powers and duties shall have the same legal effect as if done by the former officer, board, commission, institution or department, or any deputy, inspector or subordinate officer thereof. Every person and corporation shall be subject to the same obligations and duties and shall have the same rights arising from the exercise of such rights, powers and duties as if such rights, powers and duties were exercised by the officer, board, commission, department or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this Act. Every person and corporation shall be subject to the same penalty or penalties, civil or criminal, for failure to perform any such obligation or duty, or for doing a prohibited act, as if such obligation or duty arose from, or such act were prohibited in, the exercise of such right, power or duty by the officer, board, commission, or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this Act. Every officer and employee shall, for any offense, be subject to the same penalty or penalties, civil or criminal, as are prescribed by existing law for the same offense by any officer or employee whose powers or duties devolved upon him under this Act. All books, records, papers, documents, property, real and personal, unexpended appropriations, and pending business in any way pertaining to the rights, powers and duties so transferred to or vested in a department created by this Act, shall be delivered and transferred to the department succeeding to such rights, powers and duties.

§ 33. Wherever reports or notices are now required to be made or given, or papers or documents furnished or served by any person to or upon any officer, board, commission, or institution, or deputy, inspector or subordinate thereof, abolished by this Act, the same shall be made, given, furnished, or served in the same manner to or upon the department upon which are devolved by this Act the rights, powers and duties now exercised or discharged by such officer, board, commission, or institution, or deputy, inspector or subordinate thereof; and every penalty for failure so to do shall continue in effect.

§ 34. This Act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action or proceeding had or commenced in a civil or criminal cause before this Act takes effect; but such actions or proceedings may be prosecuted and continued by the department having jurisdiction, under this Act of the subject matter to which such litigation or proceeding pertains.

The term of office and manner of appointment of commissioners was fixed in the Civil Administrative Code as follows:

§ 12. Each officer whose office is created by this Act shall be appointed by the Governor, by and with the advice and consent of the Senate. In

any case of vacancy in such offices during the recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some person to fill such office; and any person so nominated, who is confirmed by the Senate, shall hold his office during the remainder of the term and until his successor shall be appointed and qualified. If the Senate is not in session at the time this Act takes effect, the Governor shall make a temporary appointment as in case of a vacancy.

§ 13. Each officer whose office is created by this Act, except as otherwise specially provided for in this Act, shall hold office for a term of four years from the second Monday in January next after the election of a Governor, and until his successor is appointed and qualified.

No provision is made in the Code for minority political representation on the Commission.

This Act in many of its features is similar to the United States Statute creating the Interstate Commerce Commission. *Farmers' Elevator Co. of Yorkville v. Chicago R. I. & P. Ry. Co.* 266 Ill. 567.

The Act not only confers on the State Public Utilities Commission all the powers and duties previously exercised by the Railroad and Warehouse Commission, but specifically names and includes every other kind of business of a public nature which is subject to regulation as a public utility. *State Public Utilities Commission v. Monarch Refrig. Co.*, 267 Ill. 528.

2. Secretary and Counsel.

§ 2. The Commission shall have a secretary, to be appointed by the Commission, to hold office during its pleasure, who shall keep a record of all proceedings, transactions, communications and official acts of the Commission and perform such other duties as the Commission may prescribe.

The Commission shall appoint as counsel to the Commission an attorney-at-law of the State of Illinois, who shall hold office at the pleasure of the Commission. The counsel to the Commission shall have power subject to the approval of the Commission to appoint and at pleasure remove attorneys-at-law to assist him in the performance of his duties.

NOTE.—The salary of the counsel of the Commission was increased to \$8,000 by an amendment of June 25, 1915. The case of *Fergus et al. v. Russel et al.*, 270 Ill. 304 decided by the Supreme Court November 6, 1915, however, held that the Attorney General is the chief law officer of the State, and the sole official advisor of the executive officers and all boards, commissions and departments of the State government, and that it is his duty to conduct the law business of the State, both in and out of court. The office of counsel for the Commission was thus wiped out.

The office of secretary of the Public Utilities Commission is created by section 5 of the Civil Administrative Code.

3. Additional Officers and Employees.

§ 3. The Commission shall have power upon consultation with and the approval of the Governor, to appoint or employ such additional officers and such accountants, engineers, experts, inspectors, clerks, and employees as it may deem to be necessary to carry out the provisions of this Act or to perform the duties and exercise the powers conferred by law upon the Commission. Such appointments, others than those of attorneys, chief engineer, chief accountant, one private secretary or stenographer to each commissioner, experts temporarily employed and other positions which may be exempted by the Civil Service Commission, shall be included in the classified civil service of the State, and shall be made subject to the provisions of an Act entitled, "An Act to

regulate the civil service of the State of Illinois," approved May 11, 1905, in force July 1, 1905, and Acts amendatory thereto.

NOTE.—This section of the law is protected by the following provision in the Civil Administrative Code:

§ 24. Nothing in this Act shall be construed to amend, modify, or repeal the State civil service law, or to extend the application thereof to any position created by this Act where the duties to be performed under such position do not now exist or are now performed by an officer or employee not in the classified civil service of the State. Every officer and employee in the classified civil service at the time this Act takes effect shall be assigned to a position in the proper department created by this Act, having, so far as possible, duties equivalent to his former office or employment, and such officers and employees shall be employees of the State in the classified civil service of the State, of the same standing, grade and privileges which they respectively had in the office, board, commission or institution from which they were transferred, subject however, to existing and future civil service laws. This section shall not be construed to require the retention of more employees than are necessary to the proper performance of the functions of the departments.

4. Oath of Office—Qualifications—Bond, Etc.

§ 4. Each commissioner and each person appointed to office by the Commission, shall before entering upon the duties of his office, take and subscribe the constitutional oath of office.

Each commissioner shall devote his entire time to the duties of his office, and shall hold no other office or position of profit, or engage in any other business, employment or vocation.

No person in the employ of or holding any official relation to any corporation or person subject in whole or in part to regulation by the Commission, and no person holding stocks or bonds in any such corporation, or who is in any other manner pecuniarily interested therein, directly or indirectly, shall be appointed to or hold the office of commissioner or be appointed or employed by the Commission; and if any such person shall voluntarily become so interested his office or employment shall *ipso facto* become vacant: *Provided*, that if any person become so interested otherwise than voluntarily he shall within a reasonable time divest himself of such interest, and if he fails to do so his office or employment shall become vacant.

No commissioner nor person appointed or employed by the Commission shall solicit or accept any gift, gratuity, emolument or employment from any person or corporation subject to the supervision of the Commission, or from any officer, agent, or employee thereof; nor solicit, request from or recommend, directly or indirectly, to any such person or corporation, or to any officer, agent or employee thereof the appointment of any person to any place or position. And every such corporation and person, and every officer, agent or employee thereof, is hereby forbidden to offer to any commissioner or to any person appointed or employed by the Commission any gift, gratuity, emolument or employment. If any commissioner or any person appointed or employed by the Commission shall violate any provision of this paragraph he shall be removed from the office or employment held by him. Every person violating the provisions of this paragraph shall be guilty of a misdemeanor.

Before entering upon the duties of his office each commissioner shall give bond, with security to be approved by the Governor, in the sum of \$20,000, conditioned for the faithful performance of his duty as such commissioner. Every person appointed or employed by the Commission, may, in the discretion of the Commission, before entering upon the duties of his office, be required to give bond for the faithful discharge of his duties, in such sum as the Commission may designate, which bond shall be approved by the Commission.

NOTE.—This provision is restated in section 7 of the Civil Administrative Code as follows:

No public utility commissioner or employee of the Public Utility Commission shall be in the employ of or hold any official relation to any corporation or person subject in whole or in part to regulation by the Commission nor shall he hold stocks or bonds in any such corporation or be in any other manner pecuniarily interested therein, directly or indirectly, and if any public utility commissioner or employee shall voluntarily become so interested, his office or employment shall *ipso facto* become vacant, and if any public utility commissioner or employee becomes so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest.

The provision as to oath of office and bond is restated in section 15 of the Code thus:

§ 14. Each officer whose office is created by this Act shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office, which shall be filed in the office of the Secretary of State.

§ 15. Each executive and administrative officer whose office is created by this Act, shall, before entering upon the discharge of the duties of his office, give bond, with security to be approved by the Governor, in such penal sum as shall be fixed by the Governor, not less in any case than ten thousand dollars, conditioned for the faithful performance of his duties, which bond shall be filed in the office of the Secretary of State.

The Civil Administrative Code further provides:

§ 11. Each executive and administrative officer, except the two food standard officers, the members of the mining board, and the members of the normal school board shall devote his entire time to the duties of his office and shall hold no other office or position of profit.

5. Salaries and Expenses.

§ 5. The annual salary of each commissioner shall be ten thousand dollars. The annual salary of the secretary to the Commission shall be five thousand dollars. The annual salary of the counsel to the Commission shall be six thousand dollars. All officers, accountants, engineers, clerks inspectors, experts and employees of the Commission shall receive the compensation fixed by the Commission subject to the approval of the Governor.

The commissioners and their officers, accountants, engineers, clerks, inspectors, experts and other employees, shall have reimbursed to them all actual and necessary traveling and other expenses and disbursements necessarily incurred or made by them in the discharge of their official duties. The Commission may also incur necessary expenses for office furniture, stationery, printing and other incidental expenses. Said salaries and expenses shall be paid out of moneys appropriated for the Commission, only upon the order of the chairman of the Commission, approved by the Governor.

NOTE.—The Civil Administrative Code provides:

§ 9. The executive and administrative officers whose offices are created by this Act shall receive annual salaries, payable in equal monthly installments as follows: * * *

Each public utility commissioner shall receive seven thousand dollars;

The Secretary of the Public Utilities Commission shall receive four thousand dollars.

Section 5 of the Act is not unconstitutional. *State Public Utilities Commission ex rel. Mitchell et al v. Chicago & West Towns Ry. Co.*, 275 Ill. 555.

6. Office of the Commission—Meetings—Seal, Etc.

§ 6. The office of the Commission shall be in the State Capitol. Such office shall be open for business between the hours of eight in the morning and five in the evening throughout the year and one or more responsible persons to be designated by the Commission or by the secretary under the direction of the Commission shall be on duty at all times in immediate charge thereof.

The Commission shall hold stated meetings at least once a month at its office and may hold such special meetings as it may deem necessary at any place within the State.

The Commission may, for the authentication of its records, process and proceedings, adopt, keep and use a common seal, of which seal judicial notice shall be taken in all courts of this State; and any process, writ, notice or other paper which the said Commission may be authorized by law to issue shall be deemed sufficient if signed by the secretary of said Commission and authenticated by such seal; and all Acts, orders, proceedings, rules entries, minutes, schedules and records of said Commission, and all reports and documents filed with said Commission, may be proved in any court of this State by a copy thereof, certified to by the secretary of said Commission, with the seal of said Commission attached.

NOTE.—The provisions of the Civil Administrative Code affecting this section are as follows:

§ 16. The director of each department is empowered to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employees and clerks, the distribution and performance of its business and the custody, use and preservation of the records, papers, books, documents and property pertaining thereto.

§ 17. Each department shall maintain a central office in the capitol building at Springfield, in rooms provided by the Secretary of State. The director of each department may, in his discretion and with the approval of the Governor, establish and maintain, at places other than the seat of government, branch offices for the conduct of any one or more functions of his department.

§ 18. Each department shall be open for the transaction of public business at least from eight-thirty o'clock in the morning until five o'clock in the evening of each day except Sundays and days declared by the negotiable instrument Act to be holidays.

§ 19. Each department shall adopt and keep an official seal.

§ 20. Each department is empowered to employ, subject to civil service laws in force at the time the employment is made, necessary employees, and, if the rate of compensation is not otherwise fixed by law, to fix their compensation.

§ 21. All employees in the several departments shall render not less than seven and one-half hours of labor each day, Saturday afternoons, Sundays and days declared by the negotiable instrument Act to be holidays

excepted in cases in which, in the judgment of the director, the public service will not thereby be impaired.

§ 22. Each employee in the several departments shall be entitled during each calendar year to fourteen days' leave of absence with full pay. In special and meritorious cases where to limit the annual leave to fourteen days in any one calendar year would work peculiar hardship, it may, in the discretion of the director of the department, be extended.

§ 23. No employee in the several departments, employed at a fixed compensation, shall be paid for any extra services, unless expressly authorized by law.

7. Fees to be Charged by Commission.

§ 7. The Commission shall charge and collect the following fees: For copies of papers and records not required to be certified or otherwise authenticated by the Commission, ten cents for each folio; for certified copies of evidence and proceedings before the Commission or of official documents and orders filed in its office fifteen cents for each folio, and one dollar for every certificate under seal affixed thereto; for certifying a copy of any report made by a public utility to the Commission, for each certified copy of the annual report of the Commission, one dollar. No fees shall be charged or collected for copies of papers, records, or official documents furnished to any city or public officers for use in their official capacity, or for the annual reports of the Commission in the ordinary course of distribution, but the Commission may fix reasonable charges for publications issued under its authority. All fees charged and collected by the Commission shall belong to the people of the State, and shall be paid monthly, accompanied by a detailed statement thereof, into the treasury of the State to the credit of the general fund.

NOTE.—See *Kennedy v. State Public Utilities Commission*, 286 Ill. 490.

8. Supervision of Utilities—Rules and Regulations—Records—Reports of Commission.

§ 8. The Commission shall have general supervision of all public utilities, shall inquire into the management of the business thereof and shall keep itself informed as to the manner and method in which the business is conducted. It shall examine such public utilities and keep informed as to their general condition, their franchises, capitalization, rates and other charges, and the manner in which their plants, equipments and other property owned, leased, controlled or operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service but also with respect to their compliance with the provisions of this Act and any other law, with the orders of the Commission and with the charter and franchise requirements.

In case any public utility is engaged in carrying on any business other than that of a public utility, which other business is not otherwise subject to the jurisdiction of the Commission, such public utility in respect of such other business shall be subject to inquiry, examination and inspection by the Commission in the same manner as the public utility business in so far as such inquiry, examination and inspection may be necessary to enforce any provision of this Act. The determination of the Commission that a necessity for any regulation of non-public

business of a public utility exists shall be *prima facie* evidence of the fact in any action in a court of this State to enforce or set aside an order or ruling of the Commission.

The Commission may confer in person, or by correspondence, by attending conventions, or in any other way, with the members of railroad or other public utility Commissions of other states and with the Interstate Commerce Commission on any matters relating to public utilities.

The Commission shall have power to adopt reasonable and proper rules and regulations relative to the exercise of its powers, and proper rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings, and to alter and amend the same.

All proceedings of the Commission and all documents and records in its possession shall be public records, except as in this Act otherwise provided. The Commission shall make an annual report to the Governor on or before the first day of December in each year, after the year 1913, which shall contain copies of all orders issued by it, and any information in the possession of the Commission which it shall deem of value to the people of the State.

The Commission shall conduct a hearing and take testimony relative to any pending legislation with respect to any person, corporation or matter within its jurisdiction, if requested to do so by the General Assembly or by either branch thereof, or by a standing committee of either branch thereof, and shall report its conclusions to the General Assembly. The Commission may also recommend the enactment of such legislation with respect to any matter within its jurisdiction as it deems wise or necessary in the public interest. The Commission shall, at such times as the Governor shall direct, examine any particular subject connected with the condition and management of public utilities, and report to him in writing its opinion thereon with its reasons therefor.

NOTE.—The Commission is an administrative body, not a court, and has no jurisdiction to adjudicate controverted rights of parties growing out of contract. *People ex rel. Bd. of Administration v. Peoria & Pekin Union Ry. Co.*, 273 Ill. 440.

The Commission has no arbitrary power permitting it to enter a confiscatory order. *State Public Utilities Commission ex rel. Beck v. Toledo, St. Louis & Western R. Co.*, 267 Ill. 93.

JURISDICTION IN GENERAL:

The Public Utilities Act "expressly authorizes this Commission to determine and fix the just, reasonable and sufficient rates or other charges, classifications, rules, regulations, contracts or practices of any public utility doing business within the State. No limitation of such powers of the Commission is to be found in the Act." *Re Mississippi Valley Teleph. Co.*, III. I. P. U. C. 24, P. U. R. 1917-B 368; *Citizens of Alledo v. Peoples' Tel. Co. et al.*, III. I. P. U. C. 43.

"The statute providing for the regulation of public utilities within the State was passed in the exercise of the police powers of the State and all ordinances or contracts affecting rates or charges by public utilities, for commodities or services to be rendered or performed by them, must be held to have been made in view of, and subject to the right of the State to exercise this police power in such a way as to disregard such contracts or ordinances if the interests and welfare of the public should so demand." *Re Mississippi Valley Teleph. Co.*, III. I. P. U. C. 24, 26, P. U. R. 1917-B 368; see also *Hite v. Cincinnati, Indianapolis & W. R. Co.*, 284 Ill. 297; *Re Polo Mutual Telephone Co.*, III. I. P. U. C. 31, P. U. R. 1916-B 318. The Public Utilities Commission is given no arbitrary power by the statute, and the orders of the Commission must be lawful and reasonable. *State Public Utilities Comm. ex rel. v. Chicago, Milwaukee & St. Paul Ry.*, 287 Ill. 412.

The Commissions' rate making power is not limited by the provisions of private contracts. *Danvers Teleph. Co. v. Carlock Farmers' Teleph. Co.*, V. I. P. U. C. 16, P. U. R. 1918-A 235; *Re Rockford Elec. Co.*, V. I. P. U. C. 35, P. U. R. 1918-A 541. See however the amendment of 1919 to Sec. 39 of the Act.

The Commission's jurisdiction is not restricted by the terms of contractual ordinances and franchises. *Re Kewanee Home Teleph. Co.*, V. I. P. U. C. 20, P. U. R. 1918-B 172; *Re Bloomington & Normal Ry. & L. Co. et al.*, V. I. P. U. C. 679;

Re Galva Elec. L. Co., V I. P. U. C. 747; *Re Mariana Teleph. Co.*, V I. P. U. C. 783; *Re Decatur Ry. L. Co.*, V I. P. U. C. 906; *Stein v. Chicago Teleph. Co.*, V I. P. U. C. 908; *Re City Water Co. of Shelbyville* V I. P. U. C. 992; *Re Central Ill. Public Service Co.*, V I. P. U. C. 1023, P. U. R. 1918-F 820.

The Commission has no power to compel performance of a private contract. *Danvers Telph. Co. v. Carlock Farmers' Teleph. Co.*, V I. P. U. C. 16, P. U. R. 1918-A 235; *North American Car Co. v. Indianahoma Refining Co.*, V I. P. U. C. 160; *Boone County Co-op. Teleph. Co. v. Belvidere Teleph. Co.*, V I. P. U. C. 940, P. U. R. 1918-F 97.

The Commission has power to consider the construction of private contracts made by a utility when such consideration is necessary to determine the interests of persons seeking to be made parties to the proceeding. *Re Western Illinois Teleph. Co. et al.*, V I. P. U. C. 1.

The Commission has no jurisdiction to override an injunctive order issued by a Circuit Court requiring a utility to serve a consumer at rates fixed by contract. *Re Illinois Northern Utilities Co.*, VI I. P. U. C. 136.

The Commission has jurisdiction over all incorporate contracts between utilities. *Re Quincy Gas. Elec. & H. Co. et al.*, III I. P. U. C. 98.

The Commission has no jurisdiction over disputes between a utility and a municipality relative to franchise provisions. *City of Bushnell v. Central Ill. Public Service Co.*, III I. P. U. C. 57.

The Commission has no jurisdiction to enforce a local assessment for paving against an electric railroad company. *Orvis v. Chicago & M. Elec. R. Co.*, II I. P. U. C. 84, P. U. R. 1915-A 1000.

The Commission has no jurisdiction to compel an electric railroad company to maintain the streets on which its tracks are laid in such manner as not to interfere with the public use. *Orvis v. Chicago & M. Elec. R. Co.*, II I. P. U. C. 84, P. U. R. 1915-A 1000; *Re Quincy Ry. Co.*, VI I. P. U. C. 435.

The Commission has no authority to compel a street railway company to carry mail carriers free in accordance with the provisions of a city ordinance. *Ericson v. Evanston St. Ry. Co.*, III I. P. U. C. 61, P. U. R. 1916-B 918. See also *Golden v. Chicago & Northwestern Ry. Co.*, V I. P. U. C. 317; *Public Utilities Comm. v. Springfield Consolidated Ry. Co.*, VI I. P. U. C. 271.

The Commission has no jurisdiction to order the removal of old decayed telephone poles when their removal is primarily a question of compliance with a franchise ordinance. *City of Genoa v. De Kalb County Teleph. Co.*, II I. P. U. C. 83.

The Commission has no jurisdiction over street lighting franchises. *City of Bushnell v. Central Ill. Public Service Co.*, III I. P. U. C. 57; *Hubbard v. Public Service Co. of N. Illinois et al.*, V I. P. U. C. 44.

The Commission has no jurisdiction over a dispute between a telephone company and a subscriber as to the number of messages sent from the subscriber's phone. *Fulton v. Chicago Teleph. Co.*, IV I. P. U. C. 153, P. U. R. 1917-A 527.

The Commission has no power to compel an electric consumer to repair his service line connecting with the company's transmission line, or to require him to keep it in a safe condition. *Abbott L. & P. Co. v. Parks* III I. P. U. C. 96, P. U. R. 1916-D 1093.

It was the intention of the legislature, as manifested by the language of the Act to give the Commission a very large and comprehensive jurisdiction over the affairs and operation of public utilities, but it is not the intention that the Commission should be allowed to substitute its management for the management of the companies. *Citizens of Aledo v. Peoples' Teleph. Co. et al.*, III I. P. U. C. 43.

The Commission has jurisdiction over the sale of a public utility plant to the municipality. *Public Utilities Comm. v. Citizens W. W. Co.*, V I. P. U. C. 550.

The Commission has jurisdiction over prior orders of the Railroad & Warehouse Commission. *Re Wabash, Chester & Western R. et al.*, III I. P. U. C. 49; *Illinois Central R. Co. et al. v. Bloomington etc. R. Co.*, IV I. P. U. C. 105.

The Commission's jurisdiction relative to discontinuance of service is explained in the following cases. *Re Central Ill. Public Service Co.*, III I. P. U. C. 93, P. U. R. 1916-B 920; *City of Pana v. Central Ill. Public Service Co.*, III I. P. U. C. 95, P. U. R. 1916-B 177; *Re Fairview Transp. Co.*, IV I. P. U. C. 159, P. U. R. 1917-E 44; *Village of Palestine v. Oblong Gas Co.*, V I. P. U. C. 10.

The Commission has power to require an electric railway to permit another utility to use its tracks, wires and poles where the public convenience so requires. *Weatherby v. Decatur Ry. & L. Co. et al.*, VI I. P. U. C. 360.

The Commission has no jurisdiction to award damages to a shipper for an alleged loss caused by giving the wrong number of a car in a bill of lading. *Mundhenk Fuel Co. v. Chicago & E. Ill. R. Co.*, II I. P. U. C. 89.

Charges of an electric utility for making minor repairs upon the consumer's own equipment, covering the cost of delivery of lamps on renewal and of the calling for or delivery by the company of heating appliances in need of repair are not within the jurisdiction of the Commission because such services are not a part of the company's public utility business. *Public Utilities Comm. v. Commonwealth Co.*, V I. P. U. C. 1276, P. U. R. 1918-F 109.

Utilities to Comply with Requests and Obey Orders of Commission.

§ 9. Every public utility shall furnish to the Commission all information required by it to carry into effect the provisions of this Act, and shall make specific answers to all questions submitted by the Commission.

Any public utility receiving from the Commission any blanks with directions to fill the same, shall cause the same to be properly filled or so as to answer fully and correctly each question therein propounded and in case it is unable to answer any question, it shall give a good and sufficient reason for such failure; and said answer shall be verified under oath by the president, secretary, superintendent or general manager of such public utility and returned to the Commission at its office within the period fixed by the Commission.

Whenever required by the Commission, every public utility shall deliver to the Commission, any or all maps, profiles, reports, documents, books, accounts, papers and records in its possession, or in any way relating to its property or affecting its business, and inventories of its property, in such form as the Commission may direct, or verified copies of any or all of the same.

Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the Commission in the matters herein specified, or in any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees.

10. Definitions.

§ 10. Unless otherwise specified, the word "Commission," when used in this Act, means the State Public Utilities Commission of Illinois which is created and established under the provisions of this Act.

The term "commissioner," when used in this Act means one of the members of the Commission.

The term "public utility," when used in this Act, means and includes every corporation, company, association, joint stock company, partnership or individual, their lessees, trustees, receivers appointed by any court whatsoever (except, however, such public utilities as are or may hereafter be owned or operated by a municipality) that now or hereafter:

(a) May own, control, operate or manage, within the State directly or indirectly for public use, any plant, equipment or property used or to be used for or in connection with the transportation of persons or property or the transmission of telegraph or telephone messages between points within this State; or for the production, storage, transmission, sale, delivery or furnishing of heat, cold, light, power, electricity or water; or for the conveyance of oil or gas by pipe line; or for the storage or warehousing of goods; or for the conduct of the business of a wharfinger; or that

(b) May own or control any franchise, license, permit or right to engage in any such business.

The term "common carrier," when used in this Act, includes steam railroads, street railroads, express companies, private car lines, sleeping car companies, fast freight lines, steamboat lines and other common carriers by water, and every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever, owning

operating or managing any such agency for public use in the transportation of persons or property within the State.

The term "railroad," when used in this Act, includes every railroad other than a street railroad, by whatsoever power operated for public use in the transportation of persons or property for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, poles, wires, stations, real estate and terminal facilities of every kind, used, operated, controlled or owned by or in connection with any railroad.

The term "street railroad," when used in this Act, includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the transportation of persons or property for compensation, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place in any city, village or incorporated town, and including all equipment, switches, spurs, tracks, poles, wires, right of trackage, subways, tunnels, stations, terminals and terminal facilities of every kind, together with all real estate used, operated, controlled or owned by or in connection with any such street railroad; but the said term "street railroad," when used in this Act, shall not include a railroad constituting or used as part of a trunk line railroad system.

The term "transportation of persons," when used in this Act, includes any service in connection with the receipt, carriage and delivery of the person transported and his baggage, and all facilities, used or necessary to be used in connection with the safety, comfort and convenience of the person transported.

The term "transportation of property," when used in this Act, includes any service in connection with the receipt, carriage, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property transported.

The term "express company," when used in this Act, includes every corporation, company, association, joint stock company or association, firm partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever, engaged in the transportation of freight, merchandise or other property for compensation on the route or line of any other common carrier.

The term "company," when used in this Act in connection with a public utility, includes any corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever, owning, holding, operating, controlling or managing such a public utility, but not municipal corporations.

The term "corporation," when used in this Act, includes any corporation, company, association, joint stock company or association, but not municipal corporations.

The term "person," when used in this Act, includes an individual, firm or co-partnership.

The term "warehouse," when used in this Act, includes all elevators or storehouses where grain is stored for a compensation, whether the property stored be kept separate or not.

The term "wharfinger," when used in this Act, includes every corporation, not municipal, or person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, controlling, operating or managing any dock, wharf, or structure used by vessels or other water craft in connection with or to facilitate the receipt or discharge of freight or passengers within this State.

The term "service," when used in this Act, is used in its broadest and most inclusive sense, and includes not only the use or accommodation afforded consumers or patrons, but also any product or commodity furnished by any public utility and the plant, equipment, apparatus, appliances, property and facilities employed by, or in connection with, any public utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public.

The term "rate," when used in this Act, includes every individual or joint rate, fare, toll, charge, rental or other compensation of any public utility or any two or more such individual or joint rates, fares, tolls, charges, rentals or other compensations of any public utility or any schedule or tariff thereof, and any rule, regulation, charge, practice or contract relating thereto.

The term "city council," when used in this Act, includes the mayor and commissioners of cities which have adopted the Commission form of municipal government and the council of all other cities and villages.

The term "city," when used in this Act includes all villages.

NOTE.—The Commission has jurisdiction over cold storage warehouses. *State Public Utilities Comm. v. Monarch Refrigerating Co.*, 267 Ill. 528.

A mutual telephone association is a public utility, even though it does not operate for profit, if its service is open, so far as its business extends, to anyone who is willing to become a member. *State Public Utilities Comm. ex rel. Noble Telegraph. Co. v. Noble Mutual Teleph. Co. et al.* 268 Ill. 411; *State Public Utilities Comm. ex rel. Pike County Teleph. Co. v. Noble et al.*, 275 Ill. 121; *Evansville Teleph. Co. v. Okaw Valley Mut. Teleph. Ass'n*, IV I. P. U. C. 128, P. U. R. 1917-D 730, rev'd. 282 Ill. 336 on the ground that since the charter of the association limits its powers to the operation of the telephone system for its members only it has no right to serve the public and no right to engage in a public utility business, and the fact that the association actually does serve the public does not bring it within the Act. (To this effect, see also *State Public Utilities Comm. ex rel. Macon County Teleph. Co. v. Bethany Mutual Teleph. Ass'n*, 270 Ill. 183.); *Village of La Prairie v. Shilo Teleph. Co. et al.*, IV I. P. U. C. 135; *Public Utilities Comm. v. Edwards Co. Independent Teleph. Ass'n*, V I. P. U. C. 1160; See also *Buncombe Teleph. Co. v. McGinnis* 268 Ill. 504.

"The question whether a person or corporation is operating a public utility is determined not by what business it is authorized by its charter to transact, but by the character of the business which it in fact and practice does transact." *Re Whitehall Ry. Co.*, V I. P. U. C. 589; but see *Okaw Valley and Bethany Mutual cases* (282 Ill. 336 and 170 Ill. 183) cited above.

An individual operating a rural telephone system open to public use is within the provisions of section 10 of the Act. *4-C Teleph. Co. v. Helmer*, IV I. P. U. C. 125, P. U. R. 1917-D 197.

A non-operating telegraph company may be a public utility within the meaning of the Act. *State Public Utilities Comm. v. Western Union Teleph. Co.*, III I. P. U. C. 77, P. U. R. 1916-E 432.

Taxi-cabs have been held not to be within the provisions of the Act. *Newcomb v. Yellow Cab. Co.*, III I. P. U. C. 69, P. U. R. 1916-B 983; *Hughes et al. v. Atlas Co.*, III I. P. U. C. 71.

Jitney buses plying between regular termini over fixed routes have been held public utilities. *Tri City Ry. Co. v. Dietz*, III I. P. U. C. 72; *Quincy R. Co. v. Snyder et al.*, III I. P. U. C. 76 but see *Re Auto Transportation Co.*, VI I. P. U. C. 382 in which the Commission held that it has no jurisdiction over motor vehicles operating outside incorporated cities, villages or unincorporated towns.

The Commission has taken jurisdiction over motor buses. *Re Chicago Stage Co.*, V I. P. U. C. 166.

The Commission has jurisdiction over motor freight distributing companies. *Re Chicago & Interurban Trac. Co.*, III I. P. U. C. 81, P. U. R. 1916-E 761; *Re Interurban Motor Despatch*, VI I. P. U. C. 216.

The Commission has jurisdiction over a stock yards company operating a railway. *St. Louis National S. Y. v. Illinois R. Co. et al.*, IV I. P. U. C. 139.

An elevator operated in connection with the private business of buying and selling grain, and not open for public use is not a public utility. *Re Winchester Farmers' Elevator & Mercantile Co.*, V I. P. U. C. 569, P. U. R. 1918-E 849.

Team tracks, terminals and spur tracks are within the terms of the Act. *Moline Sand Co. v. Chicago Burlington & Quincy R. Co.*, IV I. P. U. C. 100; *Turns Coal Co. v. Louisville & Nashville R. Co.*, IV I. P. U. C. 103; *Paul Kuhn & Co. v. Louisville & Co. v. Cleveland, Cincinnati, Chicago & St. Louis R. Co.*, V I. P. U. C. 251.

A switching railway is within the terms of the Public Utilities Act. *Re Springfield Terminal Ry. Co.*, V I. P. U. C. 805; *E. St. Louis, C. & W. R. Co. v. Pittsburgh, C. C. & St. Louis R. Co.*, V I. P. U. C. 420, P. U. R. 1918-E 654.

The Commission has exercised jurisdiction over an oil pipe line company. *Re Illinois Pipe Line Co.*, VI I. P. U. C. 232.

A corporation which renders water service to a municipality and a steam railroad operating therein, but to no other consumers, is a public utility within the meaning of the Act. *Re Central Illinois Public Service Co.*, VI I. P. U. C. 288.

ARTICLE II.

REPORTS AND ACCOUNTS.

11. Accounts, Uniform System of.

§ 11. The Commission shall have power to establish a uniform system of accounts to be kept by public utilities or to classify public utilities and to establish a uniform system of accounts for each class and to prescribe the manner in which such accounts shall be kept. It may also, in its discretion, prescribe the forms of accounts to be kept by public utilities, including records of service, as well as accounts of earnings and expenses, and any other forms, records and memoranda which in the judgment of the Commission may be necessary to carry out any of the provisions of this Act. The system of accounts established by the Commission and the forms of accounts prescribed by it shall not be inconsistent, in the case of corporations subject to the provisions of the Act of Congress entitled, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the Acts amendatory thereof and supplementary thereto, with the systems and forms from time to time established for such corporations by the Interstate Commerce Commission, but nothing herein contained shall effect the power of the Commission to prescribe forms of accounts, for such corporations, with the approval of the Interstate Commerce Commission, covering information in addition to that required by the Interstate Commerce Commission. Where the Commission has prescribed the forms of accounts to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts for such business other than those prescribed or approved by the Commission, or those prescribed by or under the authority of any other state or of the United States.

The Commission may, from time to time, alter, amend or repeal, in whole or in part, any uniform system of accounts, or the forms and manner of keeping accounts.

NOTE.—*Re Lena Electric Light & Power Co.* V I. P. U. C. 237, P. U. R. 1918-C 986; *Re Johnson County Mut. Teleph. Co.*, III I. P. U. C. 297; See General Orders Nos. 51-54, VI I. P. U. C. 291 and note, and General Orders Nos. 15 & 16.

12. Other Than Public Utility Business.

§ 12. The Commission may require every public utility engaged directly or indirectly in any other than a public utility business, as defined by law, to keep separately in like manner and form the accounts

of all such other business, and the Commission may provide for the examination and inspection of the books, accounts, papers and records of such other business, in so far as may be necessary to enforce any provision of this Act. The Commission shall have power to inquire as to and prescribe the apportionment of capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such public utility as distinguished from such other business.

NOTE.—Each of the several general orders of the Commission prescribing uniform systems of accounts for the divers types of utilities contain the following provision:

"Every utility, or owner or operator of such utility, conducting a business other than public utility business in connection with the operation of the public utility undertaking must keep records showing fully the details of such other business. The records must be so kept that the records pertaining to the utility business may be readily separated from those pertaining to other business, in order that the cost of rendering the utility service, the revenue derived therefrom and the rate of return upon the capital invested in property used in rendering such utility service may be readily ascertained."

13. Forms of Accounts.

§ 13. Such systems of accounts shall provide for forms showing all sources of income, the amounts due and received from each source and the amounts expended and due for each purpose, distinguishing clearly all payments for operating expenses from those for new construction, extensions and additions; and for balance sheets showing assets and liabilities and various forms of proprietary interest.

NOTE.—See General Orders Nos 51-54, VI I. P. U. C. 291 and note. General Order No. 54 provides that:

"The accounts, rules, definitions and instructions herein set forth comprise a system of accounts and records prescribed by the Commission for the use of all public heating utilities within its jurisdiction. All such utilities are required to keep their books of account and subsidiary records in conformity with this system."

"The records of heating utilities shall be kept with sufficient detail to show fully all facts pertaining to the entries made in the prescribed accounts. The entries in the general books, when full information is not recorded, must contain references which unmistakably identify the particular records in which the full details of such entries are shown. All records must be filed so as to be readily accessible for examination by representatives of the Commission."

"All records, financial papers, books, vouchers and documents pertaining to any or all utility's property or its corporate or financial affairs (except certificates representing retired and cancelled security issues or other papers the destruction of which may be authorized by order of the Commission) must be permanently preserved. All other original records must be preserved pending the issuance of such further order as the Commission shall make in the premises."

"Every heating utility, or owner or operator of such utility, conducting a business other than public utility business in connection with the operation of the public utility undertaking must keep records showing fully the details of such other business. The records must be so kept that the records pertaining to the utility business may be readily separated from those pertaining to other business, in order that the cost of rendering the heating utility service, the revenue derived therefrom and the rate of return upon the capital invested in property used in rendering such utility service may be readily ascertained."

Each of the other general orders mentioned contains similar provisions.

14. Depreciation Accounts.

§ 14. The Commission shall have power, after hearing, to require any or all public utilities to keep such accounts as will adequately reflect depreciation, obsolescence and the progress of the arts. The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rate of depreciation of the several classes of property for each public utility; and each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed.

NOTE.—For Commission holdings on depreciation in general see: *City of Springfield v. Springfield Gas & Elec. Co.*, III I. P. U. C. 324, P. U. R. 1916-C 281; *City*

Lincoln v. Lincoln Water & Light Co., IV I. P. U. C. 574, P. U. R. 1917-B 1;
Chicago North Shore & M. R. Co., IV I. P. U. C. 717, P. U. R. 1918-A 388; etc.
 Each of the general orders prescribing uniform systems of accounts for the
 several types of utilities contain provision substantially as follows:

77. DEPRECIATION RESERVE.

"To this account shall be credited all amounts charged to operating expense
 account No. 692, "Depreciation," to provide for accruing depreciation in the utility
 plant and equipment; also amounts charged to account No. 413, "Depreciation
 Not Covered by Reserves," if any amounts have been charged thereto as provided
 that account. There shall also be credited hereto amounts chargeable to account
 No. 411, "Surplus applied to sinking fund and other reserves," representing interest
 and income from moneys and investments belonging to the depreciation fund.

"This account should also be credited with any amount carried in reserve at
 December 31, 1918, to cover depreciation on plant and equipment.

"Depreciation on property included in balance sheet account No. 104, "Mis-
 cellaneous Physical Property," may be included in this account under a subdivi-
 sion showing clearly to what property it is applicable.

"When any property is destroyed, sold, or otherwise retired from service, the
 cost of such property as carried on the books at the time of retirement should be
 charged to this account, less insurance and salvage recovered thereon.

"If the charges to this account on account of property retired exceed the amount
 provided herein (due to inadequate charges previously made for depreciation)
 there should be charged to account No. 413, "Depreciation Not Covered by Reserves,"
 the amount in excess of the amount credited to this account an amount sufficient to provide an adequate reserve.
 See also text of account No. 413.)

"Read carefully the instructions relative to depreciation in the instructions
 pertaining to operating expenses, page 99, and instructions pertaining to "Property
 Retired," page 52, also the text of account 141, "Depreciation Fund."

"NOTE.—Companies operating more than one utility (electric, gas, heating, or
 steam) and keeping only one set of balance sheet accounts are required to open
 and maintain a separate subaccount for the depreciation reserve of each utility."

Audit and Inspection.

§ 15. The Commission may provide for the examination and
 audit all accounts, and all items shall be allocated to the accounts in
 the manner prescribed by the Commission. The officers and employees
 of the Commission shall have authority under the direction of the Com-
 mission to inspect and examine any and all books, accounts, papers,
 records and memoranda kept by such public utilities.

NOTE.—Each of the general orders prescribing uniform systems of accounts con-
 tains the following provision.

"In prescribing this system of accounts, the Commission does not bind itself
 to approve any item set out in any account, either as to amount or character, for
 the fixing purposes or when authorizing the issuance of securities. The pre-
 scribed system of accounts is designed to set out the facts in connection with the
 same, expenditures, etc., and therefrom the Commission will determine, when
 engaged in fixing rates or approving issues of securities, just what consideration
 shall be given to the various items in the several accounts."

Accounts to be Kept in State.

§ 16. Each public utility shall have an office in one of the cities,
 villages or incorporated towns in this State in which its property or
 some part thereof is located, and shall keep in said office all such books,
 accounts, papers, records and memoranda as shall be ordered by the
 Commission to be kept within the State. The address of such office
 shall be filed with the Commission. No books, accounts, papers, records,
 memoranda ordered by the Commission to be kept within the State
 shall be at any time removed from the State, except upon such con-
 ditions as may be prescribed by the Commission.

NOTE.—The Commission granted two telephone companies permission to keep
 their books, records, papers and accounts outside the State in consideration of
 the resulting economy and efficiency, on condition that such books and papers
 could be produced at any place within the State at any time requested by the
 Commission and that the Commission would be permitted to inspect them at any
 place. *Kinlock-Bloomington Teleph. Co. et al.*, II I. P. U. C. 109, P. U. R. 1915-B
 1; amending conference Rule No. 1. See also *Re Southern Bell Teleph. Co.*, III I. P.
 U. C. 238; *Re City Water Co. of E. St. L. & Granite City et al.*, III I. P. U. C. 627;
Southern Ill. L. & P. Co. et al., IV I. P. U. C. 911; *Re Streackfus Steamboat
 Co.*, IV I. P. U. C. 911.

17. Falsification or Destruction of Accounts.

§ 17. Any person who shall wilfully make any false entry in the accounts, or in any record or memorandum kept by a public utility, or who shall wilfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record or memorandum or who shall wilfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the public utility, or shall keep any accounts or record other than those prescribed or approved by the Commission, shall be guilty of a misdemeanor, and upon conviction, be subject to imprisonment in the county jail not exceeding one year, or to a fine not exceeding one thousand dollars, or to both.

NOTE.—See General Order No. 17. Each of the general orders prescribing uniform systems of accounts contains the following provisions:

"All records, financial papers, books, vouchers and documents pertaining to any or all of the utility's property or its corporate or financial affairs (except certificates representing retired and cancelled security issues or other papers the destruction of which may be authorized by order of the Commission) must be permanently preserved. All other original records must be preserved pending the issuance of such further order as the Commission shall make in the premises.

"The records of (water) utilities shall be kept with sufficient detail to show full and complete information as to all facts pertaining to the entries made in the prescribed accounts. The entries in the general books, when full information is not recorded, must contain references which unmistakably identify the particular records in which the full details of such entries are shown. All records must be filed so as to be readily accessible for examination by representatives of the Commission."

18. Penalty for Divulging Information.

§ 18. Any officer or employee of the Commission who divulges any fact or information coming to his knowledge during the course of an inspection, examination or investigation of any account, record, memorandum, book or paper of a public utility, except in so far as he may be authorized by the Commission or by a court of competent jurisdiction or a judge thereof, shall be guilty of a misdemeanor, and upon conviction, be subject to imprisonment in the county jail not exceeding one year, or to a fine not exceeding one thousand dollars, or to both.

19. Reports by Public Utilities—Penalties for Failure to Report—False Report.

§ 19. Each public utility in the State shall each year after the year 1913 furnish to the Commission, in such form as the Commission shall require, annual reports as to all the items mentioned in the preceding sections of this article, and in addition such other items, whether of a nature similar to those therein enumerated or otherwise, as the Commission may prescribe. Such annual reports shall contain all the required information for the period of twelve months ending on the thirtieth day of June in each year, or ending on the 31st day of December in each year, as the Commission may by order prescribe for each class of public utilities, and shall be filed with the Commission at its office in Springfield within three months after the close of the year in which the report is made. The Commission shall have authority to require any public utility to file monthly reports of earnings and expenses of such utility, and to file other periodical or special, or both periodical and special reports concerning any matter about which the Commission is authorized by law to keep itself informed. All reports shall be under oath.

When any report is erroneous or defective or appears to the Commission to be erroneous or defective, the Commission may notify the public utility to amend such report within thirty days, and before or after the termination of such period the Commission may examine the officers, agents, or employees, and books, records, accounts, vouchers, plant, equipment and property of such public utility, and correct such items in the report as upon such examination the Commission may find defective or erroneous.

All reports made to the Commission by any public utility and the contents thereof shall be open to public inspection, unless otherwise ordered by the Commission. Such reports shall be preserved in the office or [of] the Commission.

Any public utility which fails to make and file any report called for by the Commission within the time specified; or to make specific answer to any question propounded by the Commission within thirty days from the time it is lawfully required to do so, or within such further time, not to exceed ninety days, as may in its discretion be allowed by the Commission, shall forfeit \$100 for each and every day it may so be in default.

Any person who wilfully makes any false return or report to the Commission, or to any member, officer or employee thereof, and any person who aids or abets such person shall, upon conviction, be subject to imprisonment in the county jail not exceeding one year, or to a fine not exceeding one thousand dollars, or both.

ARTICLE III.

STOCKS AND BONDS—CAPITALIZATION—INTERCORPORATE RELATIONS—FRANCHISES—VALUATION.

20. Right to Issue Stocks, Bonds, Etc.

§ 20. The power of public utilities to issue stocks, stock certificates, bonds, notes and other evidences of indebtedness and to create liens on their property is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the State, and such power shall be exercised by the Commission hereby created according to the provisions of this Act and under such rules and regulations as the Commission may prescribe.

The Commission shall provide, by serial number or other device to be placed on the face thereof, for the proper and easy identification of such stocks, stock certificates, bonds, notes and other evidences of indebtedness as may be issued by public utilities under the provisions of this article.

NOTE.—One utility may be authorized to issue bonds to purchase property from another at a price in excess of its value, where better service will result; but the excess must not be charged to operating expenses or capital and with the expense of the bond issue must be amortized or charged to profit and loss. *Re Tyrone Electric Co.*, III I. P. U. C. 140, P. U. R. 1916-E 708.

A gas company, upon organization, was permitted to use "\$473,700 proceeds from the sale of stock and bonds for acquisition of property and construction of facilities; \$67,928 for engineering, superintendence, omissions, interest during construction, and legal expenses; \$50,000 for working capital and development expenses; and \$38,372 for organization, promotional, financing and general expenses; and salaries until operation is begun. *Re Southern Ill. Gas Co.*, III I. P. U. C. 192, 574, P. U. R. 1916-C 704.

21. Approval of Securities Issues—Application of Proceeds—Indebtedness for a Year or Less—Franchises Not to be Capitalized.

§ 21. Subject to the provisions of this Act and of the order of the Commission issued as provided in this Act, a public utility may issue stocks and stock certificates, and bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for the following purposes and no others, namely: For the acquisition of property, or for the construction, extension or improvement of or addition to its facilities, or for the discharge or lawful refunding of its obligations; or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not directly or indirectly secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidences of indebtedness of such public utility, within five years next prior to the filing of an application with the Commission for the required authorization, for any of the aforesaid purposes except maintenance of service, replacements and substitutions in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the Commission to ascertain the amount of moneys so expended and the purposes for which such expenditures were made, and the sources of the funds in the treasury of the public utility applied to such expenditures: *Provided*, that such public utility, in addition to the other requirements of law, shall first have secured from the Commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the Commission, the money, property or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order, and that, except as otherwise permitted in the order in the case of notes or other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. To enable it to determine whether it will issue such order, the Commission shall hold a hearing and may make such additional inquiry or investigation, and examine such witnesses, books, papers, accounts, documents and contracts and require the filing of such data as it may deem of assistance. The public utility may be required by the Commission to disclose every interest of the directors of such public utility in any transaction under investigation. The Commission shall have power to investigate all such transactions and to inquire into the good faith thereof, to examine books, papers, accounts, documents and contracts of public utilities, construction or other companies or of firms or individuals with whom the public utility shall have had financial transactions, for the purpose of enabling it to verify any statements furnished, and to examine into the actual value of property acquired by, or services rendered to such public utility. Before issuing its order the Commission, when it is deemed necessary by the Commission, shall make an adequate physical valuation of all property of the public utility, but a valuation already made under proper public supervision may be adopted, either in whole or in part, at the discretion of the Commission; and shall also examine all previously authorized or outstanding securi-

ties of the public utility, and fixed charges attached thereto. A statement of the results of such physical valuation, and a statement of the character of all outstanding securities, together with the conditions under which they are held, shall be included in the order. The Commission may require that such information or such part thereof as it thinks proper, shall appear upon the stock, stock certificate, bond, note or other evidence of indebtedness authorized by its order. The Commission may by its order grant permission for the issue of such stock certificates, or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of its permission such condition or conditions as it may deem reasonable and necessary. The Commission may also require the public utility to compile for the information of its shareholders such facts in regard to its financial transactions, in such form as the Commission may direct.

No public utility shall, without the consent of the Commission, apply the issue of any stock or stock certificate, or bond, note or other evidence of indebtedness, or any part thereof, or any proceeds thereof, to any purpose not specified in the Commission's order or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose, or issue, or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof. The Commission shall have the power to require public utilities to account for the disposition of the proceeds of all stocks and stock certificates, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order.

A public utility may issue notes, for proper purposes and not in violation of any provision of this Act or any other Act, payable at periods of not more than twelve months after the date of issuance of the same, without the consent of the Commission; but no such note shall, in whole or in part, be renewed from time to time without the consent of the Commission for an aggregate period of longer than two years, or be refunded by any issue of stocks and stock certificates, or of bonds, notes of any term or character or any other evidence of indebtedness, without the consent of the Commission.

The Commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise, license, or permit whatsoever or the right to own, operate or enjoy any such franchise, license, or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, license, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public utility hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger.

NOTE.—See *Re Illinois Northern Utilities Co. et al.*, III I. P. U. C. 107, P. U. R. 1917-A 816.

SECURITIES ISSUES IN GENERAL.

Re Illinois Central R. Co., III I. P. U. C. 148, P. U. R. 1915-D 1032; *Re New York Central R. Co.*, III I. P. U. C. 607 abstracted, P. U. R. 1915-D 1024; *Re Tyrone Elec. Co.*, III I. P. U. C. 140, P. U. R. 1916-E 708; *Re Southern Illinois Gas Co.*, III I. P. U. C. 579 abstracted, P. U. R. 1916-C 704; *Re Illinois Northern Utilities Co.*, III I. P. U. C. 107, P. U. R. 1917-A 816.

22. Consolidation and Reorganization—Capitalization.

§ 22. The capitalization of a public utilities formed by a merger or consolidation of two or more corporations shall be subject to the approval of the Commission, but in no event shall the Commission approve a capitalization exceeding the sum of the capital stock of the corporations so consolidated, at the par value thereof, and any additional sum actually paid in cash for improvements; nor shall any contract for consolidation or lease be capitalized in the stock of any corporation whatever; nor shall any corporation hereafter issue any bonds against or as a lien upon any contract for consolidation or merger. In any reorganization of a public utility, resulting from forced sale, or in any other manner, the amount of capitalization, including therein all stocks and stock certificates and bonds, notes, and other evidences of indebtedness, shall be such as is authorized by the Commission, which in making its determination, shall not exceed the fair value of the property involved. Issuance of stocks and stock certificates, and bonds, notes or other evidences of indebtedness in connection with any consolidation, merger, or reorganization shall be subject to all the terms of sections 20 and 21 of this Act.

NOTE.—See *Re Illinois Northern Utilities Co. et al.*, III I. P. U. C. 107, 1917-A 816, holding that the Commission need not determine the value of the property of constituent companies in order to authorize a stock issue by the consolidated companies for the purpose of effecting the consolidation, provided the proposed issue of securities does not exceed the sum of the par value of the outstanding securities of the constituent companies; but the Commission may require that the securities recite that the authorization shall not be taken as a finding of value.

23. Securities Unlawfully Issued.

§ 23. All stock and every stock certificate, and every bond, note or other evidence of indebtedness, of a public utility, not payable within twelve months issued without an order of the Commission authorizing the same then in effect shall be void, unless issued upon the authority of any articles of incorporation or amendments thereto, and of a vote of the stockholders or directors, filed and taken before this Act becomes a law, and likewise all stock and every stock certificate, and every bond, note or other evidence of indebtedness of a public utility not payable within twelve months, issued with the authorization of the Commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the Commission to contain, shall be void; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the Commission shall render void any stock or stock certificate, or any bond, note or other evidence of indebtedness, except as to a corporation or person taking the same with notice of the failure to comply with the order of the Commission.

NOTE.—See Conference Rule No. 23, III I. P. U. C. 11.

24. Penalty for Unlawfully Issuing Securities.

§ 24. Every public utility which, directly or indirectly, issues or causes to be issued, any stock, stock certificate, bond, note or other evidence of indebtedness, in non-conformity with the order of the Commission authorizing the same, or contrary to the provisions of this Act, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes specified in the Commission's order, as herein provided, or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose, shall upon conviction, be subject to a penalty of not less than five hundred dollars (\$500) nor more than twenty thousand dollars (\$20,000) for each offense.

25. Penalty for False Statement, Etc.

§ 25. Every officer, agent or employee of a public utility, and every other person who knowingly authorizes, directs, issues or executes, causes to be issued or executed, or aids in the issue or execution of any stock, stock certificate, bond, note or other evidence of indebtedness, in non-conformity with the order of the Commission authorizing the same, or contrary to the provisions of this Act; or who, in any proceeding before the Commission, knowingly makes any false statement or representation, or with the knowledge of its falsity files or causes to be filed with the Commission any false statement or representation, which said statement or representation so made, filed or caused to be filed may tend in any way to influence the Commission to make an order authorizing the issue of any stock or stock certificate, or any bond, note or other evidence of indebtedness, or which results in procuring from the Commission the making of any such order, or who, with knowledge that any false statement or representation was made to the Commission, in any proceeding, tending in any way to influence the Commission to make such order, issues or executes or negotiates, or causes to be issued, executed, or negotiated any such stock or stock certificate, or bond, note or other evidence of indebtedness, or who, directly or indirectly, knowingly applies, or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate, or bond, note or other evidence of indebtedness, to any purpose not specified in the Commission's order or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose, or who, with knowledge that any stock certificate, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this Act, negotiates, or causes the same to be negotiated, shall, on conviction thereof, be imprisoned in the State penitentiary for a term of not less than two years and not more than ten years.

26. No Guaranty of Utility Securities by State.

§ 26. No provision of this Act, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Illinois to pay or guarantee, in any manner whatsoever, any stock or stock certificate, or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of this

Act; nor shall it be held or construed to imply any validation or approval by the State of past issues, nor that past or future or past and future issues represent actual value of property owned or to be owned by a public utility or the value of such property owned or to be owned by a public utility or the value of such property for rate-making purposes.

NOTE.—*Re Illinois Northern Utilities Co. et al.*, III I. P. U. C. 107, P. U. R. 1917-A 816 where the Commission required a consolidated utility issuing securities not in excess of the total par value of those of the constituent companies to recite in such securities that the authorization did not amount to a finding of value.

27. Intercorporate Relations—Approval of Contracts and Leases.

§ 27. Unless the consent and approval of the Commission is first obtained:

(a) No two or more public utilities may enter into contracts with each other that will enable such public utilities to operate their lines or plants in connection with each other;

(b) No public utility may purchase, lease, or in any other manner acquire, control, direct or indirect, over the franchises, licenses, permits, plants, equipment, business, or other property of any other public utility;

(c) No public utility may assign, transfer, lease, mortgage, sell, or otherwise dispose of or encumber the whole or any part of its franchises, licenses, permits, plant equipment, business, or other property; but this shall not be construed to prevent the sale, lease, assignment or transfer by any public utility of any tangible personal property which is not necessary or useful in the performance of its duties to the public;

(d) No public utility may by any means, direct or indirect, merge or consolidate its franchises, licenses, permits, plants, equipment, business, or other property with that of any other public utility;

(e) No public utility may purchase, acquire take or receive any stock, stock certificates, bonds, notes or other evidences of indebtedness of any other public utility. But with the consent and approval of the Commission, a public utility may purchase, acquire, take, or hold stock, stock certificates, bonds, notes or other evidences of indebtedness of another public utility.

The proceedings for obtaining the authorization of the Commission provided for in this section shall be as follows: There shall be filed with the Commission a petition, joint or otherwise, as the case may be, signed and verified by the president and secretary of the respective companies, or by the person or company, as the case may be, clearly setting forth the object and purposes desired, and setting forth the full and complete terms of the proposed assignment, transfer, lease, mortgage purchase, sale, merger, consolidation, contract or other transaction, as the case may be. Upon the filing of such petition, the Commission shall, if it deems necessary, fix a time and place for the hearing thereon. After such hearing, or in case no hearing is required, if the Commission is satisfied that such petition should reasonably be granted, and that the public will be convenienceed thereby, the Commission shall make such order in the premises as it may deem proper and as the circumstances may require, attaching such conditions as it may deem proper, and thereupon it shall be lawful to do the things provided for in such order.

The Commission shall impose such conditions as will protect the interests of minority and preferred stockholders.

Every assignment, transfer, lease, mortgage, sale, or other disposition or encumbrance of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof, and every contract, purchase or stock, or other transaction referred to in this section, made otherwise than in accordance with an order of the Commission authorizing the same, except as provided in this section shall be void.

NOTE.—The Commission has jurisdiction over all intercorporate contracts between utilities. *Re Quincy Gas, Elec. & H. Co. et al.*, III I. P. U. C. 98.

See also *Western Illinois Teleph. Co. et al.*, V I. P. U. C. 1; *Stark County Pwuer Co. et al.*, V I. P. U. C. 63, P. U. R. 1918-A 224; *Public Utilities Comm. v. Xenia Elec. L. Co.*, V I. P. U. C. 547.

Section 27 of the Act is not in violation of section 22 of Act IV of the State constitution. *State Public Utilities Comm. ex rel. Klaw et al. v. Romberg* 275 Ill. 432.

As to the exercise of the Commission's jurisdiction over leases see *Re Chicago Teleph. Co.*, II I. P. U. C. 676 abstracted, P. U. R. 1915-A 596; *Re Sidel & Olney R. Co.*, III I. P. U. C. 625 abstracted; etc.

As to the exercise of the Commission's jurisdiction over the purchase and sale of utilities see *Re Public Service Co. of N. Illinois et al.*, II I. P. U. C. 120, P. U. R. 1915-B 353; *Re Receivers Central Union Teleph. Co. et al.*, III I. P. U. C. 127; *Re Tyrone Elec. Co. et al.*, III I. P. U. C. 140, P. U. R. 1916-E 708; *Re Coon Bros. Teleph. Co. et al.*, V I. P. U. C. 302; etc.

A telephone company, under this section of the Act, has no right, unless the consent of the Commission is first obtained, to disconnect the lines of another company from the lines of a third company and connect them with its own, even though the second had never merged with the third company but had in fact, maintained a separate and distinct organization of its own and had never parted with the ownership of its lines and equipment. *Thompson v. Pearl City Ind. Teleph. Co.*, II I. P. U. C. 86, P. U. R. 1915-B 950.

28. Transfer of Franchise or License—Foreign Corporations—Application of Law to.

§ 28. No franchise, license, permit or right to own, operate, manage or control any public utility, except common carriers engaged in interstate commerce and except telegraph or telephone companies engaged in interstate commerce, shall be hereafter granted or transferred to any grantee or transferee other than a corporation duly incorporated under the laws of this State.

No public utility shall be in any manner exempt from the provisions of this Act because or by virtue of the fact that it may be or may have been incorporated or organized under the laws of another state, or of the United States, or of a foreign country. (As amended June 26, 1917.)

NOTE.—*State Public Utilities Comm. ex rel. Klaw et al. v. Romberg* 275 Ill. 432.

29. Transfer of Franchises—Approval of.

§ 29. No franchise, license, permit or right to own, operate, manage or control any public utility shall be assigned, transferred or leased nor shall any contract or agreement with reference to or affecting any such franchise, license, permit or right be valid or of any force or effect whatsoever, unless such assignment, lease, contract or agreement shall have been approved by the Commission. Such permission shall not be construed to revive or validate any lapsed or invalid franchise, license, permit or right, or to enlarge or add to the powers and privileges contained in the grant of any franchise, license, permit or right, or to waive any forfeiture.

NOTE.—The assignment of a franchise by one telephone company to another without the consent and approval of the Commission as provided by this session

does not carry with it any right to install, operate or maintain a telephone exchange by the assignee. *Pitcher Teleph. Co. v. Steele Teleph. Co.*, II I. P. U. C. 112, P. U. R. 1915-B 664.

30. Valuation of Utility Property.

§ 30. The Commission shall have power to ascertain the value of the property of every public utility in this State and every fact which in its judgment may or does have any bearing on such value. In making such valuation the Commission may avail itself of any information, books, documents, or records in the possession of any officer, department or board of the State or any subdivision thereof. The Commission shall have power to make revaluation from time to time and also to ascertain the value of all new construction, extensions, and additions to the property of every public utility.

VALUATION IN GENERAL.

Lake Forest v. Lake Forest Water Co., II I. P. U. C. 570, P. U. R. 1915-D 1008; *City of Belleville v. St. Clair County Gas & Elec. Co.*, II I. P. U. C. 346, P. U. R. 1915-F 235, P. U. R. 1915-F 783, P. U. R. 1916-B 24; *City of Springfield v. Springfield Gas & Elec. Co.*, III I. P. U. C. 324, P. U. R. 1916-C 281; *Re De Kalb County Teleph. Co.*, III I. P. U. C. 432; *Re Bucher*, III I. P. U. C. 449, P. U. R. 1916-F 501; *Woll v. Hullinger*, III I. P. U. C. 463, P. U. R. 1916-D 380; *City of Lincoln v. Lincoln Water & Light Co.*, IV I. P. U. C. 574, P. U. R. 1917-B 1; *Re Chicago North Shore & M. R. Co.*, IV I. P. U. C. 717, P. U. R. 1918-A 388; *City of Pekin v. Pekin Water Works Co.*, IV I. P. U. C. 784, P. U. R. 1917-C 838; *Pieroy v. Citizens' Gas, Elec. & H. Co.*, V I. P. U. C. 340; *City of Peoria v. Central Union Teleph. Co.*, V I. P. U. C. 505, P. U. R. 1918-E 74; etc.

The Commission may give a higher value to the property of a utility than that fixed by the utility company itself. *Re Oblong Gas Co.*, III I. P. U. C. 401, P. U. R. 1915-A 598.

31. Fees for Issuance of Stocks and Bonds.

§ 31. The Commission shall charge every public utility receiving permission under this Act for the issue of bonds, notes and other evidences of indebtedness an amount equal to ten cents for every hundred dollars of such securities authorized by the Commission, and the same shall be paid into the State treasury before any such securities shall be issued. *Provided* that no public utility shall be required to pay any fee for permission granted to it by any such commission in any of the following cases:

- (1) To guarantee bonds or other securities.
- (2) To issue bonds, notes or other evidences of indebtedness issued for the purpose of converting, exchanging, taking over, refunding, discharging or retiring any bonds, notes or other evidences of indebtedness except:

- (a) When issued for an aggregate period of longer than two years for the purpose of converting, exchanging, taking over, refunding, discharging or retiring any note, or renewals thereof, issued without the consent of such State Public Utilities Commission of Illinois or such Public Utilities Commission.

- (b) When issued for the purpose of converting, exchanging, taking over, refunding, discharging or retiring bonds, notes or other evidences of indebtedness issued prior to January 1, 1914, and upon which no fee has been previously paid. (As amended June 29, 1917.)

NOTE.—Provisions of this section applied in *Re Chicago Great Western R. Co.*, II I. P. U. C. 598, P. U. R. 1915-A 800; *Re Peoria Ry.*, II I. P. U. C. 604, P. U. R. 1915-A 804; etc.

ARTICLE IV.

RATES AND SERVICE—ACCIDENTS.

32. General Duties of Public Utilities.

§ 32. All rates or other charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees, and the public and as shall be in all respects adequate, efficient, just and reasonable.

All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

NOTE.—See General Order No. 30, IV I. P. U. C. 10; *Western Union Tele. Co. v. Chicago Teleph. Co. et al.*, IV I. P. U. C. 92; *Cook v. Public Service Co. of N. Illinois*, IV I. P. U. C. 321, P. U. R. 1917-B 53; *Village of Palestine v. Oblong Gas Co.*, V I. P. U. C. 10. Conference Rule No. 13.

New York Central R. Co. v. Stevenson 277 Ill. 474 holds that this section repeals by implication so far as public utility corporations are concerned, the former statutory provisions for the payment of fees for issuance of or for increasing the capital stock of corporations; that under the provisions of the Public Utilities Act the fees for issuing capital stock of public utilities should be paid to the Commission and not to the Secretary of State.

See also *State Public Utilities Comm. v. Chicago, M. & St. P. Ry. Co.*, 287 Ill. 412, 417.

RATES, IN GENERAL.

The Commission by issuing an order requiring a utility to file a rate schedule does not in any way fix the rates to be charged by the company even though such order is preliminary to an order fixing rates. *State Public Utilities Comm. v. Monarch Refrigerating Co.*, 267 Ill. 528.

The Commission has power to regulate rates for transportation between two points within the State which is purely local in character, although the carrier may perform similar services with respect to interstate transportation. *Chicago M. & St. P. R. Co. v. State Public Utilities Comm.*, 268 Ill. 49.

It is not the general policy of the Commission to inquire, on its own initiative, into the reasonableness of a contract for service between municipalities and utilities entered into prior to the taking effect of the Public Utilities Act. *Re Tampico Farmers' Mut. Teleph. Co.*, III I. P. U. C. 740, P. U. R. 1915-A 24.

Upon the application of a telephone company for permission to change its rates to eliminate discrimination in favor of stockholders, and to increase its revenue, the Commission will not consider the effect of the proposed charge upon the revenues of a competing company. *Re Calhoun Farmers' Co-op. Teleph. Co.* II I. P. U. C. 508, P. U. R. 1915-C 93.

A retroactive reduction in rates cannot be made without an order of the Commission. *Re Central Illinois Public Service Co.*, III I. P. U. C. 295, P. U. R. 1916-B 922.

Electric rates cannot be shown to be excessive merely by comparison with rates in another village having three times the population and nine times the consumption and revenue. *McClanahan v. Tri-County L. & P. Co.*, III I. P. U. C. 477, P. U. R. 1916-D 187.

The Commission ordered a reduction in electric rates although the company was not making a fair return, where it appeared that increased consumption would follow such a reduction. *Woll v. Hullinger* III I. P. U. C. 463, P. U. R. 1916-D 380.

Rates increased before the effective date of the Public Utilities Act may be filed after that date without the consent of the Commission. *State Public Utilities Comm. ex rel. Mitchell v. Chicago & W. T. R. Co.*, 275 Ill. 555.

A rate fixed by the Commission after a hearing must be based upon the evidence presented to the Commission. *State Public Utilities Comm. v. Atchison T. & S. Fe. R. Co.*, 279 Ill. 194.

On a complaint against the reasonableness of rates increased before but filed after the effective date of the Public Utilities Act the Commission is without power to order a return to the old fares pending a determination of the reasonableness of the new. *State Public Utilities Comm. ex rel. Mitchell v. Chicago & W. T. R. Co.*, 275 Ill. 555.

The Commission has no power to suspend rates before the hearing and taking of evidence where they had been duly filed with the Railroad and Warehouse Com-

mission and were lower than the maximum prescribed by law *State Public Utilities Comm. v. Atchison T. & St. Fe. R. Co.*, 279 Ill. 194.

The Commission may require the establishment of joint freight rates between any two points in the State although the services rendered by the intermediate and delivering carriers are wholly within the switching district of a city, where it appears that the movement in some instances may be nearly as great as that covered by a line haul. *State Public Utilities Comm. ex rel. Am. Sand Co. v. Chicago & Northwestern Ry. Co.*, 279 Ill. 110.

The Maximum Fare Law does not prevent the Commission from fixing a rate less than two cents a mile for a company organized under the Railroad Act. *State Public Utilities Comm. ex rel. Mitchell v. Chicago & W. T. Ry. Co.*, 275 Ill. 555.

The Public Utilities Act is not unconstitutional in granting the Commission power to fix street railway fares. *State Public Utilities Comm. ex rel. Mitchell v. Chicago & W. T. Ry. Co.*, 275 Ill. 555.

The provisions of the Public Utilities Act requiring a hearing before rates can be increased are not applicable to the first rate schedule filed by a utility. *Danvers Teleph. Co. v. Carlock Farmers' Teleph. Co.* V I. P. U. C. 16, P. U. R. 1918-A 235.

SERVICE, IN GENERAL.

The Commission has power to require a railroad to construct and maintain a depot in any town or village of 200 or more inhabitants. *State Public Utilities Comm. ex rel. Beck v. Toledo, St. L. & W. R. Co.*, 267 Ill. 93.

The Commission has authority to permit a utility to discontinue service. *Re Central Ill. Public Service Co.*, III I. P. U. C. 93, P. U. R. 1916-B 920; etc.

The Commission has no power to require an electric consumer to repair or maintain his service line connecting with a transmission line. *Abbott L. & P. Co. v. Parks*, III I. P. U. C. 96, P. U. R. 1916-D 1093.

The Public Utilities Act is not unconstitutional in that it grants the Commission power to regulate street car service within a municipality. *Chicago V. O'Connell et al.* 278 Ill. 591.

The Commission has no power to regulate the practice of passengers boarding street cars in dirty working clothing and without washing their hands or faces. *State Public Utilities Comm. v. Centralia Trac. Co.*, IV I. P. U. C. 154, P. U. R. 1917-F 806.

ACCIDENTS, IN GENERAL.

State Public Utilities Comm. v. Chicago M. Elec. R. Co., III I. P. U. C. 254; *State Public Utilities Comm. v. Illinois Midland Ry. Co.*, III I. P. U. C. 253; etc.

33. Filing Schedule of Rates.

§ 33. Every public utility shall file with the Commission and shall print and keep open to public inspection schedules showing all rates and other charges, and classifications, which are in force at the time for any product or commodity furnished or to be furnished by it, or for any service performed by it, or for any service in connection therewith, or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule and shall state separately all rules, regulations, terminal, icing, storage or other charges, privileges and contracts that in any manner affect the rates charged or to be charged for any service. Such schedule shall be filed for all services performed wholly or partly within this State, and the rates and other charges and classifications shall not, without the consent of the Commission, exceed those in effect on July 1, 1913. But nothing in this section shall prevent the Commission from approving or fixing rates or other charges or classifications from time to time, in excess of or less than those shown by said schedules.

Where a schedule of joint rates or other charges, or classifications is or may be in force between two or more public utilities such schedules shall in like manner be printed and filed with the Commission, and so much thereof as the Commission shall deem necessary for the use of the public shall be filed in every station or office of such public utility in accordance with the terms of section 34 of this Act. Unless otherwise ordered by the Commission a schedule showing such joint rates or other charges, or classification need not be filed with the Commission by more than one of the parties to it: *Provided*, that there is also filed with the

Commission a concurrence in such schedule by each of the other parties thereto.

Every public utility shall file with the Commission copies of all contracts, agreements or arrangements with other public utilities, in relation to any service, product or commodity affected by the provisions of this Act, to which it may be a party, and copies of all other contracts, agreements or arrangements with any other person or corporation affecting in the judgment of the Commission the cost to such public utility of any service, product or commodity.

NOTE.—Cook v. Public Service Co. of N. Illinois, IV I. P. U. C. 321, P. U. R. 1917-E 53; Village of Palestine v. Oblong Gas Co., V I. P. U. C. 10.

This section authorizes the Commission to determine and fix rates and charges for all services performed by public utilities in Illinois subject to the Act. State Public Utilities Comm. v. Monarch Refrig. Co., 267 Ill. 528.

34. Publication and Posting of Schedules.

§ 34. Subject to such rules and regulations as the Commission may prescribe, the schedules referred to in section 33 shall be plainly printed, mimeographed or typewritten in large type, and a copy thereof shall be posted or kept on file in every station or office of a public utility where the public transacts business with such public utility. Any or all of such schedules kept as aforesaid shall be immediately produced by such public utility for inspection upon the demand of any person. A notice printed in bold type, in size prescribed by the Commission, stating that such schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rates or other charges, classification, rules or regulations in force, shall be kept posted by the public utility in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the Commission and shall conform in the case of common carriers subject to the Act of Congress entitled, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the Acts amendatory thereof and supplementary thereto, as nearly as may be, to the form of schedules and manner of posting prescribed by the Interstate Commerce Commission under said Act: *Provided*, that in lieu of filing its entire schedule in each station or office, any public utility may, subject to the regulations of the Commission, file or keep posted at such station or office, schedules of such rates or other charges, classifications, rules and regulations relating thereto, as are applicable at, to and from the place where such office is located.

The Commission may determine and prescribe the form in which the schedules required by this Act to be filed with the Commission and to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time if it shall be found expedient; *Provided, however*, that the Commission shall endeavor to have such form or forms prescribed by it conform so far as practicable to any similar form or forms prescribed by the Interstate Commerce Commission.

NOTE.—See Conference Rule No. 23, III I. P. U. C. 11.

35. No Service to be Rendered Until Schedules Filed.

§ 35. No public utility shall undertake to perform any service or to furnish any product or commodity unless or until the rates and other charges and classifications, rules and regulations relating thereto, applicable to such service, product or commodity, have been filed and published in accordance with the provisions of this Act: *Provided*, that in cases of emergency, a service, product or commodity not specially covered by the schedules filed, may be performed or furnished at a reasonable rate, which rate shall forthwith be filed and shall be subject to review in accordance with the provisions of this Act.

NOTE.—Cook v. Public Service Co. of N. Illinois, IV I. P. U. C. 321, P. U. R. 1917-E 53; Conference Rule No. 23, III I. P. U. C. 11; Danvers Teleph. Co. v. Carlock Farmers' Teleph. Co., V I. P. U. C. 16.

36. Changes of Rates—Hearings.

§ 36. Unless the Commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, except after thirty days' notice to the Commission and to the public as herein provided. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes without requiring the thirty days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed in any rate or other charge, or classification, or in any rule, regulation, practice, or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, such proposed changes shall be plainly indicated on the new schedule filed with the Commission, by some character to be designated by the Commission, immediately preceding or following the item.

No public utility shall increase any rate or other charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate or other charge, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified.

Whenever there shall be filed with the Commission any schedule stating an individual or joint rate or other charge, classification, contract, practice rule or regulation, the Commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon, such rate or other charge, classification, contract, practice, rule or regu-

lation shall not go into effect: *Provided*, that the period of suspension of such rate or other charge, classification, contract practice, rule or regulation shall not extend more than one hundred and twenty days beyond the time when such rate or other charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the Commission, in its discretion, extends the period of suspension for a further period not exceeding six months. On such hearing the Commission shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. All such rates or other charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the Commission, or of such lesser time as the Commission may grant, go into effect and be established and effective rates or other charges, classifications, contracts, practices, rules and regulations, subject to the power of the Commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same. Within thirty days after such changes have been authorized by the Commission, copies of the new or revised schedules shall be posted or filed in accordance with the terms of section 34 of this Act, in such a manner that all changes shall be plainly indicated.

NOTE.— The provision of section 36 that no change in rates shall go into effect pending a hearing by the Commission as to the reasonableness of the new rates does not apply to changes made when the first schedule is filed by a company. *State Public Utilities Comm. ex rel. v. Chicago & West Towns Ry. Co.*, 275 Ill. 555. See *Re Rockford Elec. Co.*, IV I. P. U. C. 371, P. U. R. 1817-F 196; *Re Danvers Teleph. Co. v. Carlock Farmers Teleph. Co.*, V I. P. U. C. 16; *Re Public Service Co. of N. Illinois*, V I. P. U. C. 435, P. U. R. 1918-D 240; *Stein v. Chicago Teleph. Co.*, V I. P. U. C. 908; *Cook v. Public Service Co. of N. Illinois*, IV I. P. U. C. 321, P. U. R. 1917-E 53.

Rate changes were ordered to eliminate discrimination in favor of stock holders in *Re Calhoun Farmer's Co-operative Teleph. Co.*, III I. P. U. C. 508, P. U. R. 1915-C 93; *Re Citizens Mutual Teleph. Co.*, II I. P. U. C. 510, P. U. R. 1915-C 99; *Re St. Peter Teleph. Co.*, II I. P. U. C. 496, P. U. R. 1915-B 350; *Re Montrose Mutual Teleph. Co.*, II I. P. U. C. 737, P. U. R. 1915-A 33; *Re Tampico Farmer's Mutual Teleph. Co.*, II I. P. U. C. 740, P. U. R. 1915-A 24; *Re Tri-County Teleph. Co.*, II I. P. U. C. 738, P. U. R. 1915-A 129; etc.

Rate changes were ordered to eliminate discrimination in favor of the owners of equipment in *Re Strawn Teleph. Co.*, II I. P. U. C. 740, P. U. R. 1915-C 97; *Re Farmer's Mutual Exch. of Wapella*, II I. P. U. C. 740, P. U. R. 1915-B 214; *Re St. Peter Teleph. Co.*, II I. P. U. C. 496, P. U. R. 1915-B 350; *Re Tamaroa Teleph. Co.*, III I. P. U. C. 740, P. U. R. 1915-B 662; *Re Tampico Farmer's Mutual Teleph. Co.*, II I. P. U. C. 740, P. U. R. 1915-A 24; *Re Tri-County Teleph. Co.*, II I. P. U. C. 738, P. U. R. 1915-A 129; etc.

See also *State Public Utilities Comm. ex rel. Farmers Ill. Grain Dealers Assn. et al. v. Atchison, Topeka & St. Fe. Ry. Co. et al.* 278 Ill. 58; *State Public Utilities Comm. ex rel. Turnbull v. Chicago, Peoria & St. Louis R. Co.*, 282 Ill. 158.

37. Charging More or Less Than Published Rate.

§ 37. Except as in this article otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product, or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates or other charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, except as provided in section 35, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates or other charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or.

any facility or privilege except such as are regularly and uniformly extended to all corporations and persons.

NOTE.—See *Re Tampico Farmer's Mutual Teleph. Co.*, II I. P. U. C. 740, P. U. R. 1915-A 24; *Re Citizen's Mutual Teleph. Co.*, II I. P. U. C. 510, P. U. R. 1915-C 99; etc.

See also *Hite v. Cincinnati, Indianapolis & W. R. Co.* 284 Ill. 297.

38. Discrimination Forbidden.

§ 38. No public utility shall, as to rates or other charges, services, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service.

Every public utility shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto, suitable facilities and service, without discrimination and without delay.

NOTE.—*Stein v. Chicago Teleph. Co.*, V I. P. U. C. 908; *St. Clair County Gas & Elec. Co. v. City of Belleville*, IV I. P. U. C. 409, P. U. R. 1917-C 215.

See also *State Public Utilities Comm. ex rel. E. St. Louis Stone Co. v. Terminal R. Ass'n. of St. Louis et al.*, 281 Ill. 181.

39. Discrimination—Rebates—Free Transportation—Exchange of Transportation for Advertising—Prior Transfer of Real Estate.

§ 39. No public utility, or any officer or agent thereof, or any person acting for or employed by it, shall directly or indirectly, by any device or means whatsoever, suffer or permit any corporation or person to obtain any service, commodity, or product at less than the rate or other charge then established and in force as shown by the schedules filed and in effect at the time. No person or corporation shall, directly or indirectly, by any device or means whatsoever, whether with or without the consent or connivance of a public utility or any of its officers, or employees, seek to obtain or obtain any service, commodity, or product at less than the rate or other charge then established and in force therefor: *Provided, however*, that nothing in this Act contained shall be construed to prevent any railroad or transportation company from selling or granting transportation or transportation privileges to the owner or owners of any newspaper or magazine of general circulation in payment of or in exchange for advertising space in such newspaper or magazine, at the full value thereof. *And, provided, further*, that nothing in this Act contained shall be construed to prevent the issuance of free or reduced transportation by any street railroad corporation to mail carriers, policemen and members of fire departments: *And, provided, further*, that if prior to June 30, 1913, any real estate or other tangible property shall have been sold or transferred to any public utility or public service corporation, or, if before that date, any obligation of any public utility or public service corporation created in consideration of the transfer to it of any real estate or other tangible property shall have been released or cancelled, upon consideration in whole or in part of an agreement by such public utility or public service corporation expressed in writing to render any service, or furnish any commodity or product in the future to the party or parties making such

conveyance or transfer or owning such obligation, nothing in this Act contained shall be construed to in any wise affect such agreement or to prevent the performance or enforcement thereof according to its terms, or to authorize the Commission to interfere with such performance or enforcement. (As amended June 29, 1915 and 1919.)

NOTE.—*St. Clair County Gas & Elec. Co. v. City of Belleville*, V I P. U. C. 409, P. U. R. 1917-C 215; *Re Exchange of Advertising for Transportation* I I P. U. C. 241.

40. Long and Short Haul—Common Carriers, Telephones, Telegraph, Etc.

§ 40. No common carrier subject to the provisions of this Act shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction within this State, the shorter being included within the longer distance, or charge any greater compensation as a through rate than the aggregate of the intermediate rates; but this shall not be construed as authorizing any such common carrier to charge or receive as great a compensation for a shorter as for a longer distance or haul. Upon application to the Commission, any common carrier may, in special cases; after investigation, be authorized by the Commission to charge less for a longer than for a shorter distance for the transportation of persons or property, and the Commission may from time to time prescribe the extent to which such carrier may be relieved from the operation and requirements of this section.

No telephone or telegraph company subject to the provisions of this Act shall charge or receive any greater compensation in the aggregate for the transmission of any long distance message or conversation for a shorter than for a longer distance over the same line or route in same direction, within the State, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls; but this shall not be construed as authorizing any such telephone or telegraph company to charge and receive as great a compensation for a shorter as for a longer distance. Upon application to the Commission, a telephone or telegraph company may, in special cases, after investigation, be authorized by the Commission to charge less for a longer than for a shorter distance service for the transmission of messages or conversations, and the Commission may from time to time prescribe the extent to which such telephone or telegraph company may be relieved from the operation and requirements of this section.

No other public utility shall without the consent of the Commission, charge or receive any greater compensation in the aggregate for a lesser commodity, product, or service than for a greater commodity, product or service of like character.

NOTE.—*Re Elgin Merchants' Light Co.*, III I. P. U. C. 509; *Re Central Ill. Public Service Co.*, III I. P. U. C. 548; *Re Central Ill. Public Service Co.*, III I. P. U. C. 553; *Moline Sand Co v. Chicago B. & Q. R. Co.*, IV I. P. U. C. 100.

41. Commission to Fix Rates and Regulations.

§ 41. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges,

or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion, or commutation tickets, or that the rules, regulations, contracts, or practices, or any of them, affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provision of law, or that such rates or other charges or classifications are insufficient, the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.

The Commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate or other charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates or other charges, classifications, rules, regulations, contracts and practices, or any thereof of any public utility, and to establish new rates or other charges, classifications, rules, regulations, contracts or practices or schedule or schedules, in lieu thereof: *Provided*, that nothing in this section or Act shall be construed to repeal "An Act to establish and regulate the maximum rate of charges for the transportation of passengers by corporations or companies operating or controlling railroads in part or in whole in this State, and to provide penalties for the violation of the provisions thereof, and repealing all Acts and parts of Acts in conflict therewith," approved May 27, 1907, in force July 1, 1907.

NOTE.—*Re Public Service Co. of N. Illinois*, V I. P. U. C. 435, P. U. R. 1918-D 240; *Rockford Elec. Co.*, IV I. P. U. C. 371, P. U. R. 1917-F 196.
See *State Public Utilities Comm. ex rel. Mitchell et al. v. Chicago & West Towns Ry. Co.*, 275 Ill. 555.

42. Control Over Joint Rates—Hearings.

§ 42. Whenever the Commission after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges, or classifications in force over two or more common carriers, between any two points in this State, are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate or other charge, or classification exists between such points, and that the public convenience and necessity demand the establishment of a through route and joint rate or other charge, or classification between such points, the Commission may order such common carriers to establish such through route and may establish and fix a joint rate or other charge, or classification which will be just and reasonable, to be followed, charged, enforced, demanded and collected in the future, and the terms and conditions under which such through route shall be operated. The Commission may order that freight moving between such points shall be carried by the different common carriers, parties to such through route and joint rate, without being transferred from the originating cars. In case the common carriers do not agree upon the division between them of the joint rates or other charges established by the Commission over such through routes, the Commission shall, after hearing, by supplemental order, establish such

division. *Provided*, that where any railroad which is made a party to a through route has itself over its own line and equally satisfactory through route between the termini of the through route established, such railroad shall have the right to require as its division of the joint rate or other charge its local rate or other charge over the portion of its lines comprised in such through route, and the Commission may, in its discretion, allow to such railroad more than its local rate or other charge whenever it will be equitable so to do: *And, provided*, that the shipper shall have the right to route his freight whenever through rates shall have been established either by the Commission or by the common carrier.

The Commission shall also have power, after a hearing had upon its own motion or upon complaint, to order any other public utilities to establish and fix reasonable and sufficient joint rates or other charges, or classifications. In case such public utilities do not agree upon the division between them of such joint rates or other charges the Commission shall, after hearing, establish such division by supplemental order.

NOTE.—*Moline Sand Co. v. Chicago B. & Q. R. Co.*, IV I. P. U. C. 100; *State Public Utilities Comm. v. Lebanon Tel. Exchange*, IV I. P. U. C. 329.
State Public Utilities Comm. ex rel. Am. Sand & Gravel Co. et al. v. Chicago & N. W. Ry. Co., 279 Ill. 110 affirmed an order of the Commission requiring railway companies involved to establish joint rates on sand and gravel from points of origin to points within the Chicago switching district.

43. Interstate Rates.

§ 43. The Commission shall have the power to investigate all existing or proposed interstate rates or other charges, and classifications, and all rules and practices in relation thereto, of any public utility, where any Act in relation thereto shall take place within this State; and when the same are, in the opinion of the Commission, excessive or discriminatory or in violation of the Act of Congress entitled, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the Acts amendatory thereof and supplementary thereto, or of any other Act of Congress, or in conflict with the rulings, orders or regulations of the Interstate Commerce Commission, the Commission may apply by petition or otherwise to the Interstate Commerce Commission or to any court of competent jurisdiction for relief.

44. Interchange of Traffic or Service—Joint Rates.

§ 44. Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad company shall receive from every other railroad company having the same gauge track, at any point of connection, freight cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad company, or to point of transfer accord-

ing to route billed, if the destination be upon the line of some other railroad company. But nothing in this Act shall be construed as requiring any common carrier to give the use of its terminal facilities to another common carrier engaged in like business.

Every telephone company and telegraph company operating in this State shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telephone or telegraph company with which a joint rate has been established or with whose line a physical connection may have been made.

NOTE.—*Alton Bd. of Trade v. Cleveland, C. C. & St. L. Ry. Co.*, III I. P. U. C. 282; *Plymouth Mutual Teleph. Co. v. Farmers Mutual Teleph. or Switchboard Co.*, IV I. P. U. C. 333, P. U. R. 1917-E 464; *E. St. Louis, C. & Waterloo Ry. Co. v. Pittsburgh C. C. & St. L. Ry. Co.*, V I. P. U. C. 420, P. U. R. 1918-E 654.

See also *State Public Utilities Comm. ex rel. Alton Bd. of Trade v. Cleveland, C. C. & St. Louis Ry. Co.* 285 Ill. 184; *State Public Utilities Comm. ex rel. Am. Sand & Gravel Co. et al. v. Chicago & N. W. Ry. Co.*, 279 Ill. 110.

45. Side Track Connections—Jurisdiction Over.

§ 45. Every railroad company, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, or of any corporation, person or municipal corporation owning, operating or controlling any wharf or harbor facilities, for a connection between the railroad of such railroad company and any existing or contemplated track, tracks or railroad of such corporation, person or municipal corporation, shall make such connection and provide such switches and tracks as may be necessary for that purpose and deliver and receive cars thereover: *Provided*, that such connection is reasonably practicable and can be installed and used without materially increasing the hazard of the operation of the railroad with which such connection is sought, and that the business which may reasonably be expected to be received by such railroad company over such connection is sufficient to justify the expense of such connection to such railroad company.

Under the conditions specified in the above proviso every railroad company, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, shall construct upon its right of way a spur or spurs for the purpose of receiving and delivering freight thereby, and shall receive and deliver freight thereby.

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that application has been made by any corporation or person to a railroad company for a connection or spur as provided in this section, and that the railroad company has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him, the Commission shall make an order requiring the providing of such connection or spur and the maintenance and use of the same upon reasonable terms which the Commission shall have the power to prescribe. Whenever any such connection or spur has been so provided, any corporation or person shall be entitled to connect with the track, tracks or railroad thereby connected with the railroad of the railroad company and to use the same or to use the spur so provided upon payment to the party or parties incurring the primary expense of such track, tracks or railroad, or the connection therewith or of such

spur, of a reasonable proportion of the cost thereof to be determined by the Commission after notice to the interested parties and a hearing thereon: *Provided*, that such connection and use can be made without unreasonable interference with the rights of the party or parties incurring such primary expense. The Commission shall likewise have the power to require one railroad company to switch to private spurs and industrial tracks upon its own railroad the cars of a connecting railroad company and to prescribe the terms and compensation for such service.

NOTE.—*Haskins Coal Co. v. Chicago & E. Illinois R. Co.*, III I. P. U. C. 304; *Turns Coal Co. v. Louisville & Nashville R. Co.*, IV I. P. U. C. 103.

Farmers' Elevator Co. of Yorkville et al v. Chicago R. I. & Pac. Ry. Co., 226 Ill. 567 holds that the Commission must hold a public hearing and take evidence, giving all parties interested a chance to present their case before a physical connections between two railways can be compelled.

See also *State Public Utilities Comm. ex rel. Cameron v. Lake Erie & W. R. Co.*, 277 Ill. 574 sustaining Commn's. order directing the railroad to reconstruct a spur track.

46. Tracks—Physical Connections.

§ 46. Whenever the Commission shall find, after a hearing made upon complaint or upon its own motion, that the public convenience and necessity would be subserved by having track connections made, between any two or more railroads or between any two or more street railroads, the Commission shall order and such railroads or street railroads of the same or similar gauge to make physical connection at any and all crossings, and at all points where a railroad shall begin or terminate at or near any other railroad, and at all towns or cities where two or more railroads enter the limits of the same, so that the cars of any such railroad company may be speedily transferred from one railroad to another, and shall order whether the expense thereof shall be borne jointly or otherwise.

47. Telephone and Telegraph—Physical Connections.

§ 47. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall determine that public convenience and necessity require a physical connection for the establishment of a continuous line of communication between any two or more public utilities for the conveyance of messages or conversations, the Commission may, by order, require that such connection be made. If such public utilities do not agree upon the division between them of the cost of such physical connection or connections, the Commission shall have authority, after further hearing, to establish such division by supplemental order.

NOTE.—*State Public Utilities Comm. v. Lebanon Teleph. Exchange* IV I. P. U. C. 329; *Citizens of Aledo v. People's Teleph. Co. and Home Mutual Teleph. Co.*, III I. P. U. C. 43; *Galesburg Union Teleph. Co. v. Farmington. Co.*, III I. P. U. C. 293, P. U. R. 1916-E 460; etc

48. Joint Use of Facilities.

§ 48. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other property or equipment, or any part thereof, on, over or under any street or highway, belonging to another public utility, and that such use will not prevent the owner or other users thereof from performing their public duties nor result in irreparable injury to such owner or other users of such conduits, subways, tracks,

wires, poles, pipes or other property or equipment, or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the Commission may, by order, direct that such use be permitted and prescribe a reasonable compensation and reasonable terms and conditions for such joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other property or equipment, for such damage as may result therefrom to the property of such owner or other users thereof: *Provided*, that nothing in this section shall be construed to extend the jurisdiction of the Commission over the joint use of such facilities of public utilities mainly or primarily within a city and subject to the jurisdiction of such city.

NOTE.—See General Order No. 30, Sec. 6, P. U. R. 1917-A 872 for rules for electrical construction for jointly used pole lines. See also, *Re Cumberland Teleph. & Teleg. Co.*, III I. P. U. C. 611; etc.

49. Facilities—Power of Commission to Require Adequate Facilities.

§ 49. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed and shall fix the same by its order, decision, rule or regulation. The Commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility.

NOTE.—*Village of Palestine v. Oblong Gas Co.*, V I. P. U. C. 10; *Dexter Baber v. Cleveland, C. C. & St. L. R. Co.*, IV I. P. U. C. 97; *Re Public Service Co. of N. Illinois*, V I. P. U. C. 435, P. U. R. 1918-D 240.

50. Additions and New Structures—Joint Construction.

§ 50. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes to be made or such structure or structures, be erected in the manner and within the time specified in said order. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the Commission has ordered to be erected, require joint action by two or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at the joint cost whereupon the said public

utilities shall have such reasonable time as the Commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

NOTE.—See *Re Wabash Chester & Western R. Co. et al.*, III I. P. U. C. 49; *Re Public Service Co. of Northern Illinois* III I. P. U. C. 229; *Re Mommence Utilities Co.*, VI I. P. U. C. 257.

State Public Utilities Comm. ex rel. Wabash R. Co. v. Illinois Cent. R. Co., 274 Ill. 36 reverses an order of the Commission requiring the construction of a new interlocker and dividing the cost of operating it.

Chicago, E. & Q. R. Co. v. Cavanagh et al., 278 Ill. 609 holds that under sections 50 and 58 the Commission has power where the public safety requires it, to compel the abolition of a grade crossing and the relocation of a railroad track; also that the Commission may confer upon the railroad the power of eminent domain to acquire the necessary lands upon which to construct the new crossing.

51. Adequacy of Railroad Service—Hearing.

§ 51. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any railroad or street railroad company does not run a sufficient number of trains or cars, or possess or operate sufficient motive power, reasonably to accommodate the traffic, passenger, or freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the Commission shall have power to make an order directing any such railroad or street railroad company to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car, or to change the stopping place or places thereof, or to make any other order that the Commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

52. Distribution of Cars—Expediting Traffic—Demurrage—Storage—Switching—Delivery of Express—Weights.

§ 52. Every railroad company shall, when within its power to do so, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight in carload lots, and shall use reasonable diligence in moving freight and making deliveries thereof. In case of insufficiency of cars at any time to meet all requirements, such cars as are available shall be distributed among the several applicants therefor in proportion to their respective immediate requirements without discrimination between shippers, localities or competitive or non-competitive places: *Provided, however*, that preference may be given to shipments of live stock and perishable property. The Commission, after a hearing upon its own motion or upon complaint, may issue orders concerning the distribution of cars.

The Commission shall have power to fix and establish reasonable rates, rules and regulations regarding demurrage, storage, icing and all other charges incident to the transportation of property, and to fix and establish reasonable switching rules and regulations, and to establish reasonable limits for said switching and reasonable rates therefor; and shall have power to provide proper rules and regulations the time within which all railroads shall furnish after demand therefor, all cars, equipment and facilities necessary for the handling of freight, in carload and less than carload lots, the time within which consignors and persons ordering cars shall load the same, and the time within which consignees and persons to whom freight may be consigned shall unload and discharge the same and receive freight from the freight rooms, and to provide penalties to be paid for failure on the part of the railroads, consignors and consignees to conform to such rules. The Commission shall also have the power to provide the time within which express packages shall be received, gathered, transported and delivered at destination, and the limits within which express packages shall be gathered and distributed and telegraph and telephone messages delivered without extra charge.

The Commission shall have power to enforce reasonable regulations for the weighing of cars, and of freight offered for shipment over any line of railroad, and to test the weights made by any railroad and scales used in weighing freight on cars.

NOTE.—Conference Rule No. 24; *Illiopolis Farmers' Grain Co. v. Wabash Ry. Co.*, IV I. P. U. C. 30; *State Public Utilities Comm. v. Atchison Topeka & St. Fe Ry. Co. et al.*, III I. P. U. C. 260; *Dexter Baber v. Cleveland, C. C. & St. Louis Ry. Co.*, IV I. P. U. C. 97; *State Public Utilities Comm. v. Alton & Southern R. Co.*, IV I. P. U. C. 87, IV I. P. U. C. 272.

State Public Utilities Comm. v. Baltimore & O. S. W. R. Co., 281 Ill. 405 reversed an order of the Commission prescribing a plan to be followed by carriers in the distribution of coal cars in time of car shortage. The court held that this was a matter exclusively within the jurisdiction of the Interstate Commerce Commission.

53. Conditions in Contracts for Service Forms of Express Receipts.

§ 53. The Commission is authorized to make rules and regulations concerning the conditions to be contained in and become a part of contracts for public utility services, and any and all services concerning the same, or connected therewith.

The Commission shall have authority to prescribe a form of receipt for each shipment by express, also a form of receipt for moneys paid for charges for the transportation by express of any article or thing, to be given upon receipt, or upon the payment of such charges.

Upon demand of a shipper each receiving or forwarding express company shall be required to furnish a receipt or other evidence in writing, in such form as may be prescribed by or approved of by said Commission, stating the quantity, character, weight, order and condition of goods or articles tendered for shipment, and said express companies shall in like manner execute and furnish upon demand a receipt for the charges paid on any shipment, which shall cover substantially the following items: Date of shipment; name of consignor; name of connecting line or express company; name or description of each article or package covered by or in such receipt; the graduate scale or rate employed in making the rate or charge on such article or package, separately; the amount of charge on each article or package; the amount

of advanced charges (if any); the sum total of charges to be paid by the consignee. And any such express company is hereby prohibited from including in any such receipt for shipments to be made any restriction or evasion of the common law liability of such carrier.

54. Standards of Service.

§ 54. The Commission shall have power to ascertain, determine and fix for each kind of public utility suitable and convenient standard commercial units of service, product or commodity, which units shall be lawful units for the purposes of this Act; to ascertain, determine and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the performing of its service or to the furnishing of its product or commodity by any public utility, and to prescribe reasonable regulations for examining, measuring and testing such service, product or commodity, and to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for examining, measuring, or testing such service, product or commodity. The Commission may purchase such materials, apparatus and standard measuring instruments as it deems necessary to carry out the provisions of this section.

The Commission shall provide for the inspection of the manner in which every public utility conforms to the reasonable regulations prescribed by the Commission for examining, measuring and testing its service, product or commodity, and the Commission may supplement such inspections by examining, measuring and testing the service, product or commodity of any public utility. Any consumer or user may have tested any appliance for examining, measuring or testing any such service, product or commodity upon payment of the fees fixed by the Commission. The Commission shall declare and establish reasonable fees to be paid for examining and testing such appliances on the request of consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the measuring appliance be found unreasonably defective or incorrect to the disadvantage of the consumer or user.

The Commission, its officers, agents, experts or inspectors and employees shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this Act, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor.

Nothing contained in this section shall limit in any manner any powers or authority vested in cities by Article VI of this Act, when such cities have acted pursuant to such authority.

NOTE.—See Conference Rule No. 19, II I. P. U. C. 16.

55. Certificate of Convenience and Necessity.

§ 55. No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facilities or in extension thereof or in addition thereto, unless and until it shall have obtained from the

Commission a certificate that public convenience and necessity require such construction.

No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State at the time this Act goes into effect shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto it shall have the power to issue certificates of public convenience and necessity.

Such certificates may be altered or modified by the Commission, upon its own motion or upon application by the person or corporation affected. Unless exercised within a period of two years from the grant thereof authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void.

NOTE.—*4-C Teleph. Co. v. Helmer* IV I. P. U. C. 125, P. U. R. 1917-D 197; *Chicago Teleph. Co. v. Postal Teleg.-Cable Co. of Illinois* IV I. P. U. C. 184, P. U. R. 1917-D 383; *Boone County Rural Teleph. Co. v. Farmers' Union Teleph. Co.*, IV I. P. U. C. 188, P. U. R. 1917-D 194; *Plymouth Mutual Teleph. Co. v. Plymouth Farmer's Switchboard Co.*, IV I. P. U. C. 191, P. U. R. 1917-E 464; *Re Schrader-meyer* V I. P. U. C. 134.

See *State Public Utilities Comm. ex rel Chicago Teleph. Co. v. Postal Telegraph-Cable Co.*, 285 Ill. 411 holding that a telegraph company may install telephone service over its wires without an additional certificate of convenience and necessity.

State Public Utilities Comm. ex rel. Pike County Teleph. Co. v. Noble et al. 275 Ill. 121 holding that "the test whether the new construction is entirely new or is an extension of an existing plant is the determination as to whether or not it is a construction to further the same kind of business or to install a new service."

See also *State Public Utilities Comm. ex rel. Evansville Teleph. Co. v. Okaw Valley Mutual Teleph. Ass'n.*, 282 Ill. 336.

56. Report and Investigation of Accidents.

§ 56. Every public utility shall file with the Commission, under such rules and regulations as the Commission may prescribe, a report of every accident occurring, or that may occur, to or on its plant, equipment, or other property of such a nature as to endanger the safety, health or property of any person: *Provided*, that whenever any accident occasions the loss of life or limb to any person, such public utility shall immediately give notice to the Commission of the fact by the speediest means of communication, whether telephone, telegraph or post.

The Commission shall investigate all accidents occurring within this State upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the Commission, investigation by it, and shall have the power to make such order or recommendation with respect thereto as in its judgment may seem just and reasonable: *Provided*, that neither the order or recommendation of the Commission nor any accident report filed with the Commission shall be admitted in evidence in any action for damages based on or arising out of the loss of life, or injury to person or property, in this section referred to.

NOTE.—See General Order No. 43, IV I. P. U. C. 71; General Order No. 44, IV I. P. U. C. 73; *State Public Utilities Comm. v. Chicago & M. Elec. R. Co.*, III I. P. U. C. 254; etc.

7. Safety of Plant, Appliances, Railroad Track, Etc.

§ 57. The Commission shall have power, after a hearing and upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise, to require every public utility to maintain and operate its plant, equipment or other property in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signalling, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, passengers, customers or the public may demand.

Whenever it shall come to the knowledge of the Commission that the equipment or appliances, or the apparatus, track, bridges, trestles or other structures of any common carrier are out of repair or in an unsafe condition, it shall, after an investigation, give notice in writing to the common carrier of the improvements and changes deemed necessary to place the same in a safe condition, and shall recommend to the common carrier that it make such repairs, changes, improvements or new constructions as the Commission shall deem necessary to the safety of persons and property being transported thereon. The Commission shall give such common carrier an opportunity for a full hearing, and unless the common carrier shall satisfy the Commission that no action is required to be taken with respect to any or all of such matters the Commission shall fix a time within which repairs, changes, improvements or new constructions deemed by it necessary shall be made. The Commission may also prescribe the rate of speed for trains or cars passing over defective tracks, bridges, trestles or other structures until repairs or new constructions required are made; and may, if, in its opinion, it is needful or proper, forbid the running of trains or cars over any defective track, bridge, trestle or other structure until the same be repaired and placed in a safe condition.

NOTE—*Re Chicago & E. Illinois R. Co.*, IV I. P. U. C. 153; *Re Illinois Central Trac. Co. et al.*, IV I. P. U. C. 110.

58. Grade Crossings—Construction—Reconstruction—Protection, Etc.

§ 58. No public road, highway or street shall hereafter be constructed across the track of any railroad company at grade, nor shall the track of any railroad company be constructed across a public road, highway or street at grade, nor shall the track of any railroad company be constructed across the track of any other railroad or street railroad company at grade, nor shall the track of a street railroad company be constructed across the track of a railroad company at grade, without having first secured the permission of the Commission: *Provided*, that this section shall not apply to the replacement of lawfully existing roads, highways and tracks. The Commission shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe. The Commission shall have power to determine and prescribe the manner, including the particular point of crossing, and the terms of

installation, operation, maintenance, use and protection of each such grade crossing.

The Commission shall also have power, after a hearing, to alter or abolish any grade crossing, heretofore or hereafter established, when in its opinion the public safety requires such alteration or abolition; or to require a separation of grades at such crossing; or to require a separation of grades at any proposed crossing where a proposed public highway may cross the tracks of any railroad or railroads; and to prescribe, after a hearing of the parties, the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad companies affected, or between such companies and the State, county, municipality or other public authority in interest: *Provided*, that nothing in this Act shall be construed to repeal an Act in relation to the crossing of one railroad by another, approved May 25, 1907, and in force July 1, 1907.

The Commission shall also have power by its order to require the construction, alteration, relocation or improvement of any crossing (including the necessary highway approaches thereto) of any railroad across any highway or public road, whether such crossing be at grade or by overhead structure or by subway, whenever the Commission finds after a hearing that such reconstruction, alteration, relocation or improvement is necessary to preserve or promote the safety of the public or of the employees or passengers of such railroad. By its original order or supplemental orders in such case, the Commission may direct such reconstruction, alteration, relocation or improvement to be made in such manner and upon such terms and conditions as may be reasonable and necessary, and may apportion the cost of such reconstruction, alteration, relocation or improvement between the railroad company or companies and other public utilities affected, or between such company or companies and other public utilities and the State, county, municipality, or other public authority in interest. The cost to be so apportioned shall include the cost of changes or alteration in the equipment of other public utilities affected as well as the cost of the relocation, diversion or establishment of any public highway, made necessary by such reconstruction, alteration, relocation or improvement of said crossing.

Whenever the Commission, after a hearing, shall find it necessary for the reconstruction, alteration, relocation or improvement of any such crossing or its necessary approaches as aforesaid, or for the abolishment of any such crossing, to relocate, divert or establish any highway or public road, or to acquire additional property for any such purpose, it may direct the railroad company or companies to acquire, and the railroad company or companies shall acquire, the necessary additional property for such purposes by purchase or, when the price to be paid can not be agreed upon with the owner thereof, in the manner provided by the law of eminent domain; or the Commission may certify such finding to the highway commissioners of the town or road district concerned. Every railroad company operating in the State of Illinois shall construct and maintain every highway grade crossing over its tracks within the State so that the roadway at the intersection shall be flush with the

rails, and, unless otherwise ordered by the Commission, shall construct and maintain the approaches thereto at a grade of not more than five (5) per cent within the right of way for a distance of not less than twenty-five (25) feet on each side of such tracks; *provided* that the grades at the approaches may be maintained in excess of five (5) per cent only when authorized by the Commission.

Every railroad operating within the State of Illinois shall remove from its rights of way at all grade crossings within the State, all brush, shrubbery and trees for a distance of not less than five hundred feet (500) in either direction from each grade crossing.

On or before December 1, 1918, every railroad operating within the State of Illinois shall furnish, erect and thereafter maintain in a conspicuous place at every grade crossing on its lines in this State outside of incorporated cities and villages, on both sides of the tracks except when otherwise ordered and at such points as directed by the Public Utilities Commission, within the right of way of such railroad, at grade crossings not designated as extra hazardous by the Commission such standard signs as the Public Utilities Commission shall determine.

At all such grade crossings in the State as may be designated by the Commission as extra hazardous, but at no others, every railroad operating within the State of Illinois shall, within thirty days after the issuance of an order by the Public Utilities Commission directing it so to do, erect and thereafter maintain such standard stop signs as said Commission shall determine are necessary, provided that no such stop shall be ordered or permitted by the Commission where there is a clear view from the highway of approaching trains on such railroad trucks (tracks) for at least five hundred feet (500) in each direction from the crossing at all points on the highway within a distance of two hundred (200) feet of such crossing. The Commission shall have power to require such signs to be lighted at night or to be accompanied by red warning lights whenever in the opinion of the Commission such additional precautions are reasonably necessary for the public safety.

Any person who unlawfully removes, throws down, injures or defaces any sign required in this section, shall be liable to a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) for each offense. (As amended June 29, 1917.)

NOTE.—General Order No. 55, VI I. P. U. C. 293; *Re Wabash Chester & Western R. Co. et al.*, III I. P. U. C. 49; *Illinois Cent. R. Co. v. City of Decatur* III I. P. U. C. 241, P. U. R. 1916-A 987; *State Public Utilities Comm. v. Illinois Central R. Co.*, IV I. P. U. C. 249; *Re Missouri Pacific R. Corp.*, V I. P. U. C. 458. *Chicago, Burlington & Quincy R. Co. v. Cavanagh et al.*, 278 Ill. 609 holds that under section 50 and 58 the Commission has power, where the public safety requires it, to compel the abolition of a grade crossing and the relocation of a railroad track; also that the Commission may confer upon the railroad the power of eminent domain to acquire the necessary lands upon which to construct the new crossing.

59. Eminent Domain.

§ 59. When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under sections 50 or 58 or subdivision two (2) of section 81 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.

NOTE.—*Re Public Service Co. of Northern Illinois* III I. P. U. C. 229; *Edwardsville Water Co. v. Madison County L. & P. Co.*, VI I. P. U. C. 113.

ARTICLE V.

PROCEEDINGS BEFORE THE COMMISSION AND IN THE COURTS.

60. Investigations and Hearings.

§ 60. The Commission, or any commissioner, or officer of the Commission designated by the Commission, shall have power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities, subject to such rules and regulations as the Commission may establish. In the conduct of any investigation, inquiry or hearing neither the Commission nor any commissioner or officer of the Commission shall be bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony before the Commission, any commissioner or an officer of the Commission shall invalidate any order, decision, rule or regulation made, approved, or confirmed by the Commission. All hearings conducted by the Commission shall be open to the public.

Each commissioner, the secretary of the Commission, and every officer of the Commission designated by it to hold any inquiry, investigation or hearing, shall have power to administer oaths and affirmations, certify to all official acts, issue subpoenas, compel the attendance and testimony of witnesses, and the production of papers, books, accounts and documents.

The words "public hearing" mean the right to appear, give evidence and to hear and examine witnesses whose testimony is presented. *Farmers' Elevator Co. of Yorkville v. Chicago, R. I. & Pacific Ry.* 266 Ill. 567.

61. Testimony—Immunity of Witnesses.

§ 61. No person shall be excused from testifying or from producing any papers, books, accounts or documents in any investigation or inquiry or upon any hearing ordered by the Commission, when ordered to do so by the Commission or any commissioner, or officer of the Commission, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before the Commission or a commissioner or an officer of the Commission: *Provided*, that such immunity shall extend only to a natural person, who in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise under oath. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

62. Attendance of Witnesses—Production of Papers.

§ 62. All subpoenas issued under the terms of this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as fees of witnesses before the Circuit Courts of this State, such fees to be paid when the witness is excused from further attendance, when the witness is subpoenaed at the instance of the Commission or any commissioner; and the disbursements made in the payment of such fees shall be audited and paid in the same manner

as are other expenses of the Commission. Whenever a subpoena is issued at the instance of a complainant, respondent, or other party to any proceeding before the Commission, the Commission may require that the cost of service thereof and the fee of the witness shall be borne by the party at whose instance the witness is summoned, and the Commission shall have power, in its discretion, to require a deposit to cover the cost of such service and witness fees and the payment of the legal witness fee and mileage to the witness when served with subpoena. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

Any person who shall be served with a subpoena to appear and testify, or to produce books, papers, accounts or documents, issued by the Commission or by any commissioner or officer of the Commission, in the course of an inquiry, investigation or hearing conducted under any of the provisions of this Act, and who shall refuse or neglect to appear, or to testify, or to produce books, papers, accounts and documents relevant to said inquiry, investigation or hearing as commanded in such subpoena, shall be guilty of a misdemeanor.

Any Circuit Court of this State, or any judge thereof, either in term time or vacation, upon application of the Commission, or a commissioner or officer of the Commission, may, in his discretion, compel the attendance of witnesses, the production of books, papers, accounts and documents, and the giving of testimony before the Commission, or before any such commissioner or officer, by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before said court.

The Commission or a commissioner or any officer of the Commission or any party may in any investigation or hearing before the Commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the courts of this State and to that end may compel the attendance of witnesses and the production of papers, books, accounts, and documents.

The Commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this State at such time and place as it may designate, of any books, accounts, papers or documents kept by any public utility operating within this State in any office or place without this State, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the Commission or under its direction.

63. Right to Inspect Books and Property and Examine Agents of Public Utilities.

§ 63. The Commission, each commissioner and each officer and person employed by the Commission shall have the right, at any and all times, to inspect the papers, books, accounts and documents, plant, equipment or other property of any public utility, and the Commission, each commissioner and any officer of the Commission authorized to administer oaths shall have power to examine under oath any officer, agent or employee of such public utility in relation to any matter within the jurisdiction of the Commission: *Provided*, that any person other

than a commissioner demanding such inspection shall produce under the seal of the Commission his authority to make such inspection: *And, provided, further*, that a written record of the testimony or statement so given under oath shall be made and filed with the Commission. Information so obtained shall not be admitted in evidence or used in any proceeding except in proceedings provided for in this Act.

64. Complaints—Notice.

§ 64. Complaint may be made by the Commission, of its own motion or by any person or corporation, chamber of commerce, board of trade, or any industrial, commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation by petition or complaint in writing, setting forth any act or thing done or omitted to be done in violation, or claimed to be in violation, of any provision of this Act, or of any order or rule of the Commission. All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review by the courts of orders of the Commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint the Commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice requiring that the complaint be satisfied and answered within a reasonable time to be specified by the Commission, or within the discretion of the Commission, by a notice fixing a time when and place where a hearing will be had upon such complaint. Notice of the time and place shall also be given to the complainant and to such other persons as the Commission shall deem necessary. The Commission shall have authority to hear and investigate any complaint, notwithstanding the fact that the person or corporation complained of may have satisfied the complaint.

The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint except as herein provided. Service in all hearings, investigations, and proceedings before the Commission may be made upon any person upon whom a summons may be served in accordance with the provisions of an Act entitled, "An Act in relation to practice and procedure in courts of record," approved June 3, 1907, in force July 1, 1907, and may be made personally or by mailing same in the United States mail in a sealed envelope, registered, with postage prepaid. The provisions of this section as to notice shall apply to all hearings held by the Commission or under its authority.

Any public utility shall have a right to complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard *ex parte* by the Commission or may be served upon any parties designated by the Commission.

NOTE.—*Re Western Illinois Teleph. Co. et al.*, V I. P. U. C. 1.

15. Hearings—Orders—Records—Copies of Official Documents and Orders.

§ 65. At the time fixed for any hearing upon a complaint, the complainant and the person or corporation complained of, and such persons or corporations as the Commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The Commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the Commission shall make and render findings concerning the subject-matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the Commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the Commission. Where an order cannot, in the judgment of the Commission, be complied with within twenty days, the Commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record shall be preserved of all proceedings had before the Commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the Commission, and the parties shall be entitled to be heard in person or by attorney.

In case of an appeal from any order or decision of the Commission, under the terms of sections 68 and 69 of this Act, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the Commission on its own initiative and considered by it in rendering its order or decision, and of the pleadings, records and proceedings in the case, shall constitute the record of the Commission: *Provided*, that on appeal from an order or decision of the Commission, the person or corporation taking the appeal and the Commission may stipulate that a certain question or certain questions alone and a specified portion only of the evidence shall be certified to the court or its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on appeal.

Copies of all official documents and orders filed or deposited according to law in the office of the Commission, certified by a commissioner or by the secretary of the Commission to be true copies of the originals, under the official seal of the Commission, shall be evidence in like manner as the originals.

In any matter concerning which the Commission is authorized to hold a hearing, upon complaint or application or upon its own motion, notice shall be given to the public utility and to such other interested persons as the Commission shall deem necessary in the manner provided in the preceding section, and the hearing shall be conducted in like manner as if complaint had been made to or by the Commission. But nothing in this Act shall be taken to limit or restrict the power of the Commission, summarily, of its own motion, with or without notice, to conduct any investigations or inquiries authorized by this Act, in such

manner and by such means as it may deem proper, and to take such action as if may deem necessary in connection therewith. With respect to any rules, regulations, decisions or orders, which the Commission is authorized to issue without a hearing, and so issues, any public utility or other person or corporation affected thereby and deeming such rule, regulations, decisions or orders, or any of them, improper, unreasonable or contrary to law, may apply for a hearing thereon, setting forth specifically in such application every ground of objection which the applicant desires to urge against such rule, regulation, decision or order. The Commission may, in its discretion, grant or deny the application, and a hearing, if had, shall be subject to the provisions of this and the preceding sections.

NOTE.—*Re Western Illinois Teleph. Co. et al.*, V I. P. U. C. 1. See also *State Public Utilities Comm. ex rel. Alton Bd. of Trade v. Cleveland, C. C. & St. Louis Ry. Co.*, 285 Ill. 184.

Where the only effect of an order of the Railroad and Warehouse Commission was to continue in effect a certain switching tariff until such tariff should be changed by agreement or on a hearing, and no new rate is established or attempted to be established the order need not, to be valid, contain a finding that the railroads interested had refused or neglected to voluntarily establish a new rate or that such new rate is necessary. *Chicago, M. & St. Paul Ry. Co. v. State Public Utilities Comm.* 267 Ill. 544.

66. Service of Orders.

§ 66. Every order of the Commission shall be served upon every person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing in the United States mail a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby or in the case of a corporation, to any officer or agent thereof upon whom a summons of a court of record may be served in an action at law. It shall be the duty of every person and corporation to notify the Commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification must be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the Commission every person and corporation upon whom it is served must, if so required in the order, notify the Commission in like manner whether the terms of the order are accepted and will be obeyed.

67. Modification of Order or Decision—Rehearing.

§ 67. The Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any rule, regulation, order or decision made by it. Any order rescinding, altering or amending a prior rule, regulation, order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original rules, regulations, orders or decisions.

After any rule, regulation, order or decision has been made by the Commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a hearing in respect to any matters determined in said action or proceeding and specified in the application for rehearing, and the Commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear.

An application for rehearing shall not excuse any corporation or person from complying with and obeying any rule, regulation, order or decision or any requirement of any rule, regulation, order or decision of the Commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the Commission may by order direct. If, after such rehearing and consideration of all the facts, including those arising since the making of the rule, regulation, order or decision, the Commission shall be of the opinion that the original rule, regulation, order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed; the Commission may rescind, alter or amend the same. A rule, regulation, order or decision made after such rehearing, rescinding, altering or amending the original rule, regulation, order or decision shall have the same force and effect as an original rule, regulation, order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original rule, regulation, order or decision unless so ordered by the Commission. Only one rehearing shall be granted by the Commission; but this shall not be construed to prevent any party from filing a petition setting up a new and different state of facts after two years, and invoking the action of the Commission thereon.

NOTE.—See *Illinois Cent. R. Co. et al. v. Bloomington etc. R. Co.*, IV I. P. U. C. 105; *Re Chicago North Shore & M. R. Co.*, VI I. P. U. C. 374.
See also *State Public Utilities Comm. ex rel. Wabash R. Co. v. Illinois Cent. R. Co.* 274 Ill. 36; *Farmers' Elevator Co. of Yorkville et al. v. Chicago, Rock Island & Pacific Ry. Co.* 266 Ill. 567.

68. Action to Set Aside Orders of Commission.

§ 68. Within thirty days after the service of any order or decision of the Commission made after a final hearing or within thirty days after a hearing or refusal of a hearing upon any rule, regulation, order or decision which the Commission is authorized to issue without a hearing and has so issued, any person or corporation affected by such rule, regulation, order or decision may appeal to the Circuit Court of Sangamon County, for the purpose of having the reasonableness or lawfulness of the rule, regulation, order or decision inquired into and determined: *Provided*, that no proceeding to contest any rule, regulation, decision or order which the Commission is authorized to issue without a hearing and has so issued, shall be brought in any court unless application shall have been first made to the Commission for a hearing thereon and until after such application has been acted upon by the Commission, nor shall any person or corporation in any court urge or rely upon any grounds not set forth in such application for a hearing before the Commission: *And, provided*, the Commission shall decide the questions presented by said application with all possible expedition consistent with the duties of the Commission. The party taking such an appeal shall file with the secretary of the Commission, at its office in Springfield, Illinois, written notice of said appeal. The Commission, upon the filing of such notice of appeal, shall, within five days thereafter, file with the clerk of said Circuit Court of Sangamon County a certified copy of the order appealed from and within ten days thereafter the record provided for in section

64. The party serving such notice of appeal shall, within five days after the service of such notice upon the Commission, file a copy of said notice, with proof of service, with the clerk of said court to which such appeal is taken, and thereupon said Circuit Court shall have jurisdiction over said appeal and the same shall be entered upon the records of said Circuit Court and shall be tried therein without formal pleadings, but otherwise according to the rules relating to the trial of chancery suits, so far as the same are applicable.

No new or additional evidence may be introduced in any proceeding upon appeal from a rule, regulation, order or decision of the Commission, issued or confirmed after a hearing, but the appeal shall be heard on the record of the Commission as certified to by it. The findings and conclusions of the Commission on questions of fact shall be held *prima facie* to be true and as found by the Commission; and a rule, regulation, order or decision of the Commission shall not be set aside unless it clearly appears that the finding of the Commission was against the manifest weight of the evidence presented to or before the Commission for and against such rule, regulation, order or decision, or that the same was without the jurisdiction of the Commission. If it appears that the Commission failed to receive evidence properly proffered, on a hearing or on a rehearing, or on application therefor, the court shall remand the case to the Commission with instructions to receive the testimony so proffered and rejected, and to enter a new order based upon the evidence theretofore taken, and such new evidence as it is directed to receive. Rules, regulations, orders or decisions of the Commission shall be held to be *prima facie* reasonable, and the burden of proof upon all issues raised by the appeal shall be upon the person or corporation appealing from such rules, regulations, orders or decisions. Upon hearing any such appeal the court shall enter judgment either affirming or setting aside the rule, regulation, order or decision of the Commission.

When no appeal is taken from a rule, regulation, order or decision of the Commission, as herein provided, parties affected by such rule, regulation, order or decision, shall be deemed to have waived the right to have the merits of said controversy reviewed by a court and there shall be no trial of the merits of any controversy in which such rule, regulation, order or decision was made, by any court to which application may be made for a writ to enforce the same, in any other judicial proceeding.

NOTE.—See, *State Public Utilities Comm. v. Atchison, Topeka & St. Fe Ry. Co.*, 279 Ill. 194; *State Public Utilities Comm. ex rel. E. St. Louis Stone Co. v. Terminal R. Ass'n. of St. Louis et al.*, 281 Ill. 181; *State Public Utilities Comm. ex rel. Farmers' Illinois Grain Dealers Ass'n. et al. v. Atchison, Topeka & St. Fe Ry. Co.*, 278 Ill. 58; *State Public Utilities Comm. ex rel. Chicago Bd. of Trade v. Toledo, St. Louis & W. R. Co.*, 286 Ill. 532; *Kennedy v. State Public Utilities Comm.*, 286 Ill. 490.

Railroad & Warehouse Comm. v. Louisville & Nashville Ry. Co., 267 Ill. 337, holds that a proceeding in the Circuit Court to determine the reasonableness of an order entered by the Commission is not an appeal, because there can be no appeal from an order of an administrative body. The court, in such case acts on evidence submitted before it, though the Commission's finding makes a *prima facie* case.

"The statute makes the Commission's findings of fact *prima facie* true, and its orders and decisions are not to be set aside unless clearly against the manifest weight of the evidence. It is not sufficient, to justify a reversal of a reasonable order of the Commission made in the lawful exercise of its powers, that a court of review should be of the opinion the order was unwise or inexpedient. To reverse and set aside an order on the ground that it is unreasonable it must be an arbitrary action, not resting on a reasonable basis for the exercise of the discretionary powers of the Commission. The orders and decisions are subject to review as to the reasonableness of the Commission's conclusions, and an unreasonable order is unlawful. Reviewing courts will examine the facts upon which

the order is based, and if there is substantial evidence to sustain the order—not a mere scintilla of proof—the order will be sustained.” *Chicago Bus Co. v. Chicago Stage Co.* 287 Ill. 320, 329 citing *Inter-State Commerce Comm. v. Union Pac. R. Co.* 222 U. S. 54; *State Public Utilities Comm. v. Chicago & West Towns Ry. Co.*, 275 Ill. 555; *State Public Utilities Comm. v. Terminal R. Ass’n.* 281 Ill. 181; and *State Public Utilities Comm. v. Toledo, St. Louis & W. R. Co.*, 267 Ill. 93. See also *State Public Utilities Comm. v. Chicago M. & St. P. Ry. Co.*, 287 Ill. 412, 417.

The court on review will not consider the propriety of the decision but only the constitutionality, i. e. whether the Commission acted within the scope of its authority. *Chicago, M. & St. P. Ry. Co. v. State Public Utilities Comm.* 267 Ill. 544; *Chicago M. & St. P. Ry. Co. v. State Public Utilities Comm.* 268 Ill. 49.

69. Appeals to Supreme Court from Circuit Court Judgments.

§ 69. Appeals from all final orders and judgments entered by the said Circuit Court, in review of rules, regulations, orders or decisions of the Commission, may be taken directly to the Supreme Court by either party to the action, within sixty days after service of a copy of the order or judgment of said Circuit Court, and shall be governed by the rules applying to chancery cases appealed to said Supreme Court, except that formal pleadings shall not be required.

NOTE.—See *Chicago, M. & St. P. Ry. Co. v. State Public Utilities Comm.*, 267 Ill. 544; *State Public Utilities Comm. ex rel. E. St. Louis Stone Co. v. Terminal R. Ass’n. of St. Louis*, 281 Ill. 181.

70. Expedition of Cases.

§ 70. Any proceeding in any court in this State directly affecting a rule, regulation, order or decision of the Commission, or to which the Commission is a party, shall have priority in hearing and determination over all other civil proceedings pending in such court, excepting election contests.

71. Suspension of Order of Commission Pending Judicial Review.

§ 71. The pendency of an appeal shall not of itself stay or suspend the operation of the rule, regulation order or decision of the Commission, but during the pendency of such appeal the Circuit Court of Sangamon County, or the Supreme Court, as the case may be, in its discretion may stay or suspend, in whole or in part, the operation of the Commission’s rule, regulation, order or decision.

No order so staying or suspending a rule, regulation, order or decision of the Commission shall be made by the court otherwise than upon three days’ notice to the Commission and after a hearing, and if the rule, regulation, order or decision of the Commission is suspended, the order suspending the same shall contain a specific finding based upon evidence submitted to the court, and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage:

Provided, however, that when any rate or other charge has been in force for any length of time exceeding one year, and such rate or other charge is advanced by the public utility, and the order of the Commission reinstates such prior rate or other charge, in whole or in part, no suspending order shall be allowed in any case from such order pending the final determination of the case in the Circuit Court, or if appealed to the Supreme Court by such Supreme Court.

In case the rule, regulation, order or decision of the Commission is stayed or suspended, the order of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approved, on review, by the court)

payable to the people of the State of Illinois, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the rule, regulation, order or decision of the Commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the rule, regulation, order or decision of the Commission, in case said rule, regulation, order or decision is sustained. The court, in case it stays or suspends the rule, regulation, order or decision of the Commission in any matter affecting rates or other charges or classifications, may, in its discretion, also by order direct the public utility affected to pay into court, from time to time, thereto to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the rule, regulation, order or decision of the Commission had not been stayed or suspended.

72. Reparation for Overcharge—Investigation of Claims Against Utilities.

§ 72. When complaint has been made to the Commission concerning any rate or other charge of any public utility and the Commission has found, after a hearing, that the public utility has charged an excessive or unjustly discriminatory amount for its product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amount.

If the public utility does not comply with an order of the Commission for the payment of money within the time fixed in such order, the complainant, or any person for whose benefit such order was made, may file in any court of competent jurisdiction a petition setting forth briefly the causes for which he claims damages and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the order of the Commission shall be *prima facie* evidence of the facts therein stated. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the action.

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the product, commodity or service as to which complaint is made was furnished or performed, and a petition for the enforcement of an order of the Commission for the payment of money shall be filed in the proper court within one year from the date of the order.

The remedy provided in this section shall be cumulative, and in addition to any other remedy or remedies in this Act provided in case of failure of a public utility to obey a rule, regulation, order or decision of the Commission.

The Commission shall have power to receive complaints regarding loss or damage occasioned by a public utility, and to make inquiry as to

the methods of adjusting such claims. All claims against any public utility for loss of, or damage to, property, or for any other loss or damage, in connection with a public utility service, not covered by the preceding paragraphs of this section, if not acted upon within ninety days from the date of the filing of the claim with the public utility, may be investigated by the Commission, in its discretion, and the results of such investigation shall be embodied in a special report which shall be open to public inspection.

NOTE.—State Public Utilities Comm. ex rel. Harley B. Mitchell et al. v. Chicago & West Towns Ry. Co., 275 Ill. 555.

73. Civil Damages.

§ 73. In case any public utility shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done either by any provisions of this Act or any rule, regulation, order or decision of the Commission, issued under authority of this Act, such public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was wilful, the court may in addition to the actual damages, award damages for the sake of example and by the way of punishment. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation.

In every case of a recovery of damages by any person or corporation under the provision of this section, the plaintiff shall be entitled to a reasonable counsel's or attorney's fee to be fixed by the court, which fee shall be taxed and collected as part of the costs in the case.

No recovery as in this section provided shall in any manner affect a recovery by the State of the penalties in this Act provided.

74. Remedies Cumulative.

§ 74. This Act shall not have the effect to release or waive any right of action by the State, the Commission, or by any body politic, municipal corporation, person or corporation for any right or penalty which may have arisen or accrued or may hereafter arise or accrue under any law of this State.

All penalties accruing under this Act shall be cumulative of each other, and suit for the recovery of one penalty shall not be a bar to or affect the recovery of any penalty or be a bar to any criminal prosecution against any public utility, or any officer, director, agent or employee thereof, or any other corporation or person.

75. Mandamus or Injunction Proceedings at Instance of Commission.

§ 75. Whenever the Commission shall be of the opinion that any public utility is failing or omitting or about to fail to omit, to do anything required of it by law, or by any order, decision, rule, regulation, direction or requirement of the Commission, issued or made under authority of this Act, or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or any order, decision, rule, regulation, direction or requirement of the Commission, issued or made under authority of

this Act, it shall direct the counsel for the Commission to commence an action or proceeding in the Circuit Court, or in any other court of concurrent jurisdiction, in and for the county in which the case or some part thereof arose, or in which the person or corporations complained of, if any, has its principal place of business, or in which the person complained of, if any, resides, in the name of the people of the State of Illinois, for the purpose of having such violation or threatened violations stopped and prevented, either by mandamus or injunction. Counsel for the Commission shall thereupon begin such action or proceeding by petition to such Circuit Court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained. In case of default in answer, or after answer, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief. An appeal may be taken from such final judgment in the same manner and with the same effect, subject to the provisions of this Act, as appeals are taken from judgments of the Circuit Court in other actions for mandamus or injunction.

76. Penalty for Violation of Act or Orders by Public Utility or Other Corporation—Separate Offenses.

§ 76. Any public utility or any corporation other than a public utility, which violates or fails to comply with any provisions of this Act, or which fails to obey, observe or comply with any order, decision, rule, regulation, direction or requirement or any part or provision thereof, of the Commission, made or issued under authority of this Act, in a case in which a penalty is not otherwise provided for in this Act, upon conviction, shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars for each and every offense.

Every violation of the provisions of this Act or of any order, decision, rule, regulation, direction or requirement of the Commission, or any part or portion thereof by any corporation or person is a separate and distinct offense and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

In construing and enforcing the provisions of this Act relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission, or failure of such public utility.

77. Persons Violating Act or Order—Penalty.

§ 77. Every person, who, either individually, or acting as an officer, agent or employee of a public utility or of a corporation other than a public utility, violates or fails to comply with any provisions of this Act, or fails to observe, obey or comply with any order, decision, rule, regulation, direction or requirement, or any part or portion thereof, of the Commission, made or issued under authority of this Act, or who procures, aids or abets any public utility in its violation of this Act or in its failure to obey, observe or comply with this Act or any such order, decision, rule, regulation, direction or requirement, or any part or portion thereof, in a case in which a penalty is not otherwise provided for in this Act, is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

78. Actions to Recover Penalties.

§ 78. Except as otherwise provided in this Act, actions to recover penalties under this Act shall be brought in the name of the People of the State of Illinois in the Circuit Court in and for the county in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. Such action shall be commenced and prosecuted to final judgment by the counsel for the Commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State in any such action shall be paid into the State treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the Commission upon such terms as the court shall approve and order.

79. Duty of Commission to Prosecute and to Enforce Laws Affecting Public Utilities.

§ 79. It is hereby made the duty of the Commission to see that the provisions of the Constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the State therefor recovered and collected, and to this end it may sue in the name of the people of the State.

See *State Public Utilities Comm. ex rel. Ed. Beck v. Toledo, St. Louis & W. R. Co.* 267 Ill. 93 holding that the Commission has power under this section to order the erection and maintenance of depots as required in ch. 114 Hurds. Rev. Stat. 1913.

80. Cancellation of Warehouses Licenses.

§ 80. The Commission is hereby authorized to hear and determine all applications for the cancellation of warehouse licenses in this State which may be issued in pursuance of any laws of this State, and for that purpose to make and adopt such rules and regulations concerning such hearing and determination as may, from time to time, by it be deemed proper. And if, upon such hearing, it shall appear that any public ware-

houseman has been guilty of violating any law of this State concerning the business of public warehousemen, the Commission may cancel and revoke the license of said public warehouseman, and immediately notify the officer who issued such license of such revocation and cancellation; and no person whose license as a public warehouseman shall be cancelled or revoked shall be entitled to another license or to carry on the business in this State of such public warehouseman until the expiration of six months from the date of such revocation and cancellation, and until he shall have again been licensed: *Provided*, that this section shall not be construed so as to prevent any such warehouseman from delivering any grain on hand at the time of such revocation or cancellation of his said license. And all licenses issued in violation of the provisions of this section shall be deemed null and void.

ARTICLE VI.

REPEAL—SAVING CLAUSE—CONSTRUCTION.

81. Acts Repealed—Transfer and Continuation of Power of R. R. Commission.

§ 81. An Act entitled, "An Act to establish a board of railroad and warehouse commissioners, and prescribe their powers and duties," approved April 13, 1871, in force July 1, 1871, together with the amendments thereto; and an Act entitled, "An Act defining and regulating express companies and carriers by express operating within the State of Illinois, declaring them to be common carriers and placing them under the jurisdiction and control of the Illinois Railroad and Warehouse Commission," approved June 9, 1911, in force July 1, 1911, are hereby repealed from and after the appointment of the State Public Utilities Commission herein created. Nothing in this Act shall be construed to repeal any other Act or part thereof conferring power on said Board of Railroad and Warehouse Commissioners except such as are in direct conflict herewith, but the rights, powers and duties conferred by law upon the Board of Railroad and Warehouse Commissioners shall be continued in full force and transferred to the State Public Utilities Commission, it being the intent of this Act to substitute the State Public Utilities Commission for the said Board of Railroad and Warehouse Commissioners.

On or before November 1, 1913, the Board of Railroad and Warehouse Commissioners shall transfer and deliver to the State Public Utilities Commission, upon its demand in writing, all books, papers and records; furniture, equipment and supplies of whatever description in its possession; and the Public Utilities Commission shall take possession of all such books, papers and records, furniture, equipment and supplies.

82. Actions and Proceedings Pending Before R. R. Commission.

§ 82. This Act shall not affect pending actions or proceedings, civil or criminal, in any court, brought by or against the people of the State of Illinois or the Board of Railroad and Warehouse Commissioners or by any other person, firm or corporation under the provisions of the Acts establishing or conferring power on the Board of Railroad and Warehouse Commissioners, nor abate any causes of action arising thereunder, but the same may be instituted, prosecuted and defended with the

same effect as though this Act had not been passed. Any investigation, hearing or proceeding, instituted or conducted by the Board of Railroad and Warehouse Commissioners prior to the taking effect of this Act may be conducted and continued to a final determination by the Public Utilities Commission with the same effect as if this Act had not been passed.

All findings, orders, decisions, rules and regulations issued or promulgated by the Board of Railroad and Warehouse Commissioners under the Acts established or conferring power on said board, shall continue in force and have the same effect as though this Act had not been passed; and the State Public Utilities Commission hereby created is empowered to enforce said findings, orders, decisions, rules and regulations in the same manner and under the same conditions as though said findings, orders, decisions, rules and regulations had been made, issued or promulgated by the State Public Utilities Commission.

NOTE.—See *Illinois Central R. Co. et al. v. Bloomington etc. R. Co.*, IV I. P. U. 3. 105; *State Public Utilities Comm. ex rel Atwood-Davis Sand Co. v. Chicago, & Northwestern Ry. Co.* 286 Ill. 53; *State Public Utilities Comm. ex rel Farmer's Illinois Grain Dealers Ass'n. et al. v. Atchison, T. & St. Fe Ry. Co.*, 278 Ill. 58.

33. Constitutionality—Divisibility of Act.

§ 83. If any section, subdivision, sentence or clause of this Act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act.

34. Act Not Applicable to Interstate Commerce.

§ 84. Neither this Act nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this Union, except when specifically so stated, and in so far as the same may be permitted under the provisions of the Constitution of the United States and Acts of Congress, and the decisions of the Supreme Court of the United States.

35. Technical Omissions Not to Invalidate Acts of Commission.

§ 85. A substantial compliance with the requirements of this Act shall be sufficient to give effect to all the acts, orders, decisions, rules and regulations of the Commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

36. Effective Date of Act.

§ 86. This Act shall take effect and be in force on and after the first day of January, 1914.

APPROVED June 30, 1913.

II. CITIES EMPOWERED TO ACQUIRE, CONSTRUCT, OWN, LEASE OR OPERATE.

AN ACT entitled, "An Act to authorize cities to acquire, construct, own and to lease or operate public utilities and to provide the means therefor." [Approved June 26, 1913; in force July 1, 1913.] (Hurd's Revised Statutes, 1917, Ch. IIIa, Secs. 87-101.)

37. City Power to Acquire, Construct or Operate Any Public Utility.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any city in this State shall have the

power, subject to the provisions of this Act, to acquire, construct, own and operate any public utility the product or service of which, or a major portion thereof, is or is to be supplied to the city or its inhabitants and to contract for, purchase and sell to private persons or corporations the product or service of such utilities; to lease any public utility owned by the city to any corporation organized under the laws of this State for the purpose of operating such public utility, for a period not longer than twenty years; to fix the rates and charges for the services rendered by such public utilities and to make all needful rules and regulations in relation thereto.

NOTE.—See the following cases decided under the Mueller Law. *Lobdell v. City of Chicago* 227 Ill. 218; *Vernner v. Chicago City R. Co.* 236 Ill. 349, writ of error dismissed 218 U. S. 699, and *Barscloux v. City of Chicago* 245 Ill. 589, 11 A. & E. A. C. 255.

88. Term "Public Utility" Defined.

§ 2. The term "public utility," when used in this Act, means and includes any plant, equipment or property, and any franchise, license or permit, used or to be used for or in connection with the transportation of persons or property or the conveyance of telegraph or telephone messages or for the production, storage, transmission, sale, delivery, or furnishing of cold, heat, light, power, water, or for the conveyance of oil or gas by pipe line; or for the storage or warehousing of goods; or for the conduct of the business of wharfinger. (As amended by Act of June 22, 1915.)

89. Must Pass Ordinance to Acquire Public Utility—Referendum.

§ 3. No city shall proceed to acquire or construct any public utility under the provisions of this Act until an ordinance of the city council providing therefor has been duly passed and submitted to the electors of such city and approved by a majority of those voting thereon. Such ordinance shall set forth the action proposed, shall describe the plant, equipment and property proposed to be acquired or constructed, and shall provide for the issue of bonds, mortgage certificates or special assessment bonds, as hereinafter authorized.

90. Proposition to Operate Must be Submitted to Electors—Electricity and Water Plants—Proceedings Legalized.

§ 4. No city shall itself proceed to operate any such public utility for the use or benefit of private consumers or users for hire or charge in such consumption or use, unless the proposition to operate shall first have been submitted to the electors of the city as a separate proposition and approved by a majority of those voting thereon; but any city may, without such submission and approval, sell electricity for heat, light or power within or without the limits of the city, generated from any electric lighting plant owned and operated by the city for the city's own use, and may without such submission and approval sell water within and without the city from any water plant owned and operated by the city: *Provided*, that the act of any city or village which has heretofore constructed, maintained, operated, controlled or leased any public utility and furnished and sold the product or service thereof for private use is hereby declared to be legal and valid, anything in any law of the State to the contrary notwithstanding.

91. Ordinance for Public Utility.

§ 5. No ordinance authorizing the lease of any public utility owned by a city for a longer period than five years, nor any ordinance renewing any such lease shall go into effect until the expiration of sixty days from and after its passage. If, within such sixty days, there is filed with the city clerk of such city a petition signed by qualified electors of the city equal to five per cent of the votes cast at the last preceding municipal election for mayor in such city, asking that such ordinance be submitted to popular vote, then such ordinance shall not go into effect unless the question of the adoption of such ordinance shall first be submitted to the electors of such city and approved by a majority of those voting thereon.

92. Reservation to Take Over Rights in Grant.

§ 6. It shall be lawful for any city to incorporate in any franchise, license or permit to a public utility company reservation of the right on the part of the city to take over all or any part of the property, plant, or equipment used in the operation of such public utility, at or before the expiration of such grant, upon such terms and conditions as may be provided in the grant, and it shall also be lawful to provide in any such grant that in case such reserved right be not exercised by the city, and it shall grant the right to another person or corporation to operate such utility in the streets and parts of streets occupied by its grantee under the former grant, the new grantee shall purchase and take over the property located in such streets and parts of streets upon the terms which the city might have taken it over.

93. Power to Acquire by Agreement or Condemnation.

§ 7. Any city shall have the power to acquire any public utility or any part thereof, authorized or operating in such city under a license, permit or franchise or operating in such city without any license, permit or franchise, by an agreement with such public utility or may proceed to procure the condemnation of the same in the manner provided by law for the taking and condemning of private property for public use.

94. May Issue Bonds.

§ 8. For the purpose of acquiring any such public utility or the property necessary or appropriate for the operation thereof or any part thereof, either by purchase, condemnation or construction, any city may borrow money and issue negotiable bonds therefor, pledging the faith and credit of the city, but no such bonds shall be issued unless the proposition to issue the same shall first have been submitted to the electors of such city and approved by a majority of those voting thereon, nor in an amount in excess of the cost to the city of the property for which said bonds are issued and 10 per cent of such cost in addition thereto.

95. Public Utility Certificates.

§ 9. For the purpose of acquiring any such public utility or the property necessary or appropriate for the operation thereof, or any part thereof, either by purchase, condemnation or construction, any city may issue and dispose of interest bearing certificates, hereinafter called public utility certificates, which shall, under no circumstances, be or become an obligation or liability of the city or payable out of any general fund thereof, but shall be payable solely out of the revenues or income to be derived from the public utility property for the acquisition of which they were issued. Such certificates shall not be issued and secured on any public utility property in an amount in excess of the cost to the city of such property as hereinbefore provided and ten (10) per cent of such cost in addition thereto. In order to secure the payment of any such public utility certificates and the interest thereon, the city may convey, by way of mortgage, or deed of trust, any or all of the public utility property acquired or to be acquired through the issue thereof; which mortgage or deed of trust shall be executed in such manner as may be directed by law for the acknowledgment and recording of mortgages of real estate and may contain such provisions and conditions not in conflict with the provisions of this Act as may be deemed necessary to secure the payment of the public utility certificates described therein. Any such mortgage or deed of trust may carry the grant of a privilege or right to maintain and operate the public utility property covered thereby, for a period not exceeding twenty (20) years from and after the date such property may come into the possession of any person or corporation as the result of foreclosure proceedings; which privilege or right may fix the rates or charges which the person or corporation securing the same as the result of foreclosure proceedings shall be entitled to charge in the operation of said property for a period not exceeding twenty (20) years. Whenever and as often as default shall be made in the payment of any public utility certificates issued and secured by a mortgage or deed of trust, as aforesaid, or

in the payment of the interest thereon when due, and any such default shall have continued for the space of twelve (12) months after notice thereof has been given to the mayor and comptroller, it shall be lawful for any such mortgagee or trustee, upon the request of the holder or holders of a majority in amount of the certificate issued and outstanding under such mortgage or deed of trust, to declare the whole of the principal of all such certificates as may be outstanding, to be at once due and payable and to proceed to foreclose such mortgage or deed of trust in any court of competent jurisdiction. At a foreclosure sale, the mortgagee or the holders of such certificates may become the purchaser or purchasers of the property and the rights and privileges sold, if he or they be the highest bidders. Any public utilities acquired under any such foreclosure shall be subject to regulation by the corporate authorities of the city to the same extent as if the right to construct, maintain and operate such property had been acquired through a direct grant without the intervention of foreclosure proceedings: *Provided, however,* that no public utility certificates shall ever be issued by any city under the provisions of this Act unless and until the question of the adoption of the ordinance of the city council authorizing the issue thereof shall first have been submitted to the electors of such city and approved by a majority of the qualified voters of the city voting upon such question. The question shall be submitted in such form as the city council may by ordinance designate.

96. Expenses of Acquiring Public Utilities—Special Assessments.

§ 10. The expense of acquiring any such public utility, or the property necessary or appropriate for the operation thereof, or any part thereof, either by purchase, condemnation or construction, or such part of the expense as may be just and reasonable, may in any city be assessed upon and collected from the property and real estate specially benefited thereby, if any, in such manner as is or may be provided by law for the making of special assessments for local improvements in such city.

97. Reclamation of Land Submerged Under Public Waters—Exception as to Park Board.

§ 11. For the purpose of acquiring or constructing wharves, piers, docks, levees or in connection with such wharves, piers, docks or levees, elevators, warehouses, vaults or necessary and appropriate tracks or terminal facilities, any city may reclaim the submerged lands under any public waters within the jurisdiction of or bordering upon the city, and shall thereupon be vested with the absolute title, in fee simple, to the lands so reclaimed; and for any of the purposes aforesaid the city may acquire, by purchase, condemnation or otherwise, the title of the private or public owners, if any there be, to lands lying beneath such public waters and also the riparian or other rights, if any there be, of the owners of the shore lands abutting on such public waters in or over such public waters or the submerged lands under such waters. Nothing herein contained shall give to any city the right to acquire submerged lands as against any park board where any grant has heretofore been made of such submerged lands to any such park board and been acted upon by such board.

98. Charges for Service.

§ 12. The charges fixed for the service rendered by it by means of any such public utility by any city shall be high enough to produce a revenue sufficient to bear all cost of maintenance and operation and to meet interest charges on bonds and certificates issued on account thereof, and to permit the accumulation of a surplus or sinking fund that shall be sufficient to meet all outstanding bonds or certificates at maturity.

99. Accounts, How Kept—Annual Report—Accounts Examined by Expert.

§ 13. Any city, when owning such public utility, shall keep the accounts for such public utility distinct from other city accounts and in such manner as to show the true and complete financial results of such city ownership or ownerships and operation, as the case may be. Such accounts shall be so

kept as to show the actual cost to such city of the public utility owned; all costs of maintenance, extension and improvement; all operating expenses of every description, in case of such city operation; the amounts set aside for sinking fund purposes; if water or other service shall be furnished for the use of such public utility without charge; the accounts shall show, as nearly as possible, the value of such service, and also the value of such similar service rendered by the public utility to any other city department without charge; such accounts shall also show reasonable allowance for interest, depreciation and insurance, and also estimates the amount of taxes that would be chargeable against such property if owned by a private corporation. The city council shall cause to be printed annually for public distribution a report showing the financial results, in form as aforesaid, of such city ownership or ownership and operation. The accounts of such public utility, kept as aforesaid shall be examined once each year by an expert accountant who shall report to the city council the results of his examination. Such expert accountant shall be selected in such manner as the city council may direct and he shall receive for his services such compensation, to be paid out of the income or revenues from such public utility, as the city may prescribe.

100. Construction of Act.

§ 14. This Act shall be deemed and construed to confer powers in addition to but not limiting those now existing.

101. Word "City" Defined.

§ 15. Whenever the word "city" is used in this Act it shall be construed to include a city, a village, or an incorporated town.

RAILROADS AND OTHER CARRIERS.

III. INCORPORATION OF RAILROAD COMPANIES.

AN ACT to provide for the incorporation of associations that may be organized for the purpose of constructing railways, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so organized; and authorizing the same and all railroad companies of this State to own and hold the stock and securities of railroad companies of other states owning connecting lines. [As amended by Act approved June 2, 1891. In force July 1, 1891. L. 1891, p. 184; Legal News Ed., p. 124.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 1-29.)

102. Corporators.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any number of persons, not less than five may become an incorporated company for the purpose of constructing and operating any railroad in this State, and that any and all railroads or transportation companies authorized to be incorporated and transact business in this State by virtue of this Act, shall be and they are hereby authorized and empowered to purchase, own, operate and maintain any railroad sold or transferred under order or powers of sale or decree of, or sale under foreclosure of mortgage or deed of trust, and corporations heretofore organized under the provisions of the Act hereby amended, their successors or assigns, shall have and possess all the powers and privileges conferred by this Act. [As amended by Act approved May 11, 1877. In force July 1, 1877. L. 1877, p. 163; Legal News Ed., p. 150.]

NOTE.—See *Wilder v. Aurora, D. K. & R. Elec. Trac. Co.*, 216 Ill. 493; *Chicago & S. Trac. Co. v. Flaherty* 222 Ill. 67; *David Bradley Mfg. Co. v. Chicago & S. Trac. Co.* 229 Ill. 170; *Schlender v. Chicago & S. Trac. Co.* 253 Ill. 154 revg. 160 Ill. app. 309; *Liebermon v. Chicago & S. S. Rapid Transit R. Co.*, 141 Ill. 140; *Brown v. Melick* 185 Ill. app. 3; etc.

103. Articles of Incorporation—Record of Same.

§ 2. Such persons shall organize by adopting and signing articles of incorporation, which shall be recorded in the office of the recorder of deeds

in each county through or into which such railway is proposed to be run, and in the office of the Secretary of State.

NOTE.—See Sec 6, 15. *People v. Rose*, 210 Ill. 582.

104. Form and Contents of Articles.

§ 3. Such articles shall contain:

First—The name of proposed corporation.

Second—The places from and to which it is intended to construct the proposed railway.

Third—The place at which shall be established and maintained the principal business office of such proposed corporation.

Fourth—The time of the commencement and the period of the continuance of such proposed corporation.

Fifth—The amount of the capital stock of such corporation.

Sixth—The names and places of residence of the several persons forming the association for incorporation.

Seventh—The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

Eighth—The number and amount of shares in the capital stock of such proposed corporation.

NOTE.—See *Golconda Northern Ry. v. Gulf Lines Connecting R. of Ill.*, 265 Ill. 194.

105. Corporate Powers—Seal—Copy of Articles—Evidence.

§ 4. When the articles shall have been filed and recorded as aforesaid the persons named as corporators therein shall thereupon become and be deemed a body corporate, and shall thereupon be authorized to proceed to carry into effect the objects set forth in such articles, in accordance with the provisions of this Act. As such body corporate, they shall have succession and in their corporate name may sue and be sued, plead and be impleaded. The said corporation may have and use a common seal, which it may alter at pleasure; may declare the interests of its stockholders transferable; establish by-laws and make all rules and regulations deemed necessary for the management of its affairs in accordance with law. A copy of any articles of incorporation filed and recorded in pursuance with this Act, or of the record thereof, and certified to be a copy by the Secretary of State, or his deputy, shall be presumptive evidence of the incorporation of such company and of the facts therein stated.

NOTE.—See *People v. Wayman*, 256 Ill. 151; *State v. Illinois-Cent. R. Co.*, 246 Ill. 188.

106. Limit of Charter—Renewal.

§ 5. No such corporation shall be formed to continue more than fifty years in the first instance, but any railroad company formed under any law of the State may be renewed from time to time, for periods not longer than fifty years: *Provided*, that three-fourths of the votes cast at any regular election for that purpose shall be in favor of such renewal and those desiring a renewal shall agree to purchase the stock of those opposed thereto at its current value. Whenever any such election is held by any railroad company, a certificate showing the proceedings of the meeting and verified by the president or a vice-president of the corporation and the secretary thereof, with the seal of the corporation, shall be filed with the Secretary of State within thirty days after the meeting, and upon the filing of such certificate *and the payment of the same fees as is provided for in the incorporation of a new company*, the duration of such corporation shall thereby be extended, in accordance with the vote of the stockholders, for an additional period not longer than fifty years: *Provided*, in case where such renewal is of any railroad company previously incorporated under a special Act of the Legislature, then such renewal and extension of such company shall be under and subject to all the provisions of the general laws of this State relating to railroads, and such company shall have such powers only as provided for in this Act.

[As amended by Act approved June 28, 1913. In force July 1, 1913. L. 1913, p. 507.]

NOTE.—The words italicised show change made in the Act by virtue of Senate bill No. 131, approved June 28, 1913, amending section 5.
See *Chicago, B. & Q. R. Co. v. Doyle* 258 Ill. 624.

107. By-laws Recorded.

§ 6. A copy of the by-laws of the corporation, duly certified, shall be recorded as provided for the recording of the articles of association in section 2 of this Act; and all amendments and additions thereto, duly certified, shall also be recorded as herein provided, within ninety days after the adoption thereof.

NOTE.—See *Durkee v. People* 155 Ill. 354.

108. Office in this State.

§ 7. Every such corporation organized under the provisions of this Act shall have and maintain a public office or place in this State for the transaction of its business, where transfers of all its stock shall be made and in which shall be kept for public inspection books wherein shall be recorded the amount of capital stock subscribed and by whom, the names of the owners of its stock, the number of shares held by each person and the number by which each of said shares is respectively designated, and the amounts owned by them respectively, the amount of stock paid in, and by whom, the transfer of said stock, the amount of its assets and liabilities and the names and places of residence of all its officers.

NOTE.—The Constitution of 1870 provides: "Every railroad corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made and in which shall be kept, or public inspection, books in which shall be recorded the amount of capital stock subscribed and by whom; the names of the owners of its stock and the amounts owned by them respectively; the amount of stock paid in and by whom; the transfer of said stock; the amount of its assets and liabilities and the names and places of residence of its officers. The directors of every railroad corporation shall, annually, make a report, under oath, to the Auditor of Public Accounts or some officer to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. And the General Assembly shall pass laws enforcing suitable penalties the provisions of this section." Constitution of 1870, Art. XI, Sec. 9.

The Act creating the State Public Utilities Commission provides: "Each public utility shall have an office in one of the cities, villages or incorporated towns of this State in which its property or some part thereof is located, and shall keep at said office all such books, accounts, papers, records and memoranda as shall be ordered by the Commission to be kept within the State. The address of such office shall be filed with the Commission. No books, accounts, papers, records or memoranda ordered by the Commission to be kept within the State shall be at any time removed from the State except upon such conditions as may be prescribed by the Commission." *Ante*, 16.

This section does not forbid corporations to have officers outside the limits of the State nor invalidate corporate acts performed out of the State. *Harvey v. Illinois Midland R. Co.* 28 Fed. 169.

09. Directors—Their Election and Classification—Vacancy.

§ 8. All the corporate powers of every such corporation shall be vested in and be exercised by a board of directors, who shall be stockholders of the corporation and shall be elected at the annual meetings of stockholders at the public office of such corporation within this State. The number of such directors, the manner of their election and the mode of filling vacancies shall be specified in the by-laws and shall not be changed except at the annual meetings of the stockholders. The first board of directors shall classify themselves by lot in such manner that there shall be, as nearly as practicable, three directors in each class. Those belonging to the first class shall go out of office at the end of one year, those of the second class at the end of two years and in like manner those of each class shall go out of office at the expiration of a number of years corresponding to the number of his class; and all vacancies occurring by reason of expiration of term shall be filled by election for a term of years equal to the number of classes.

NOTE.—See Sections 11 and 26.

110. Called Meetings.

§ 9. A meeting may be called at any time during the interval between such annual meetings, by the directors, or by the stockholders owning not less than one-fourth of the stock, by giving thirty days' public notice of the time and place of such meeting in some newspaper published in each county through or into which the said railway shall run, or be intended to run, provided there be a newspaper published in each of the counties aforesaid; and if, at any such special meeting so called, a majority in value of the stockholders equal to two-thirds of the stock of such corporation, shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business; and if, within said three days, two-thirds in value of such stock shall not be represented at such meeting, then the meetings shall be adjourned, and a new call may be given and notified as hereinbefore provided. [See § 10.]

111. Annual and Other Statements—Rate of Interest—Loans—Removal of Officers—Access to Books.

§ 10. At the regular annual meeting of the stockholders of any corporation organized under the provisions of this Act, it shall be the duty of the president and directors to exhibit a full, distinct and accurate statement of the affairs of the said corporation; and at any meeting of the stockholders or a majority of those present (in person or by proxy,) may require similar statements from the president and directors whose duty it shall be to furnish such statements when required in manner aforesaid.

And at all general meetings of the stockholders, a majority in value of the stockholders of any such corporation may fix the rates of interest which shall be paid by the corporation for loans for the construction of such railway and its appendages, and the amount of such loans.

At any special meeting, by a two-thirds vote in value of all the stock of such stockholders may remove any president, director or other officer of such corporation, and elect others instead of those so removed.

All stockholders shall, at all reasonable hours, have access to and may examine all the books, records and papers of such corporation.

NOTE.—The foregoing section should be construed in conjunction with the Act creating the State Public Utilities Commission and should be understood as being subject to the provisions thereof.

Thus, while the president and directors are required to make statements of the stockholders, the Commission has general supervision and may inquire into the management of the business (Public Utilities Commission Law, Sec. 9), *ante*, 9, and as well as compel a uniform system of accounts to be kept (Public Utilities Commission Law, Sec. 11), *ante*, 11. Further, every public utility must submit an annual report and the Commission is empowered to exact monthly and other reports (Public Utilities Commission Law, Sec. 19), *ante*, 19.

So, subject to the provisions of the Public Utilities Commission Law and of the order of the Commission, "a public utility may issue stocks and bonds, certificates, and bonds, notes and other evidences of indebtedness payable in periods of more than twelve months after the date thereof," for certain special purposes (Public Utilities Commission Law, Secs. 21, 23), *ante*, 21, 23.

112. When Directors Not Elected on Appointed Day, Etc.

§ 11. In case it shall happen, at any time, that an election of directors shall not be made on the day designated by the by-laws of such corporation for that purpose, the corporation, for such cause, shall not be dissolved, but within ninety days thereafter the stockholders shall meet and hold an election for directors in such manner as shall be provided by the by-laws of such corporation: *Provided*, that it shall require a majority in value of the stock of such corporation to elect any member of such board of directors, and a majority of such board of directors shall be citizens and residents of the State.

113. Officers—Their Duties.

§ 12. There shall be a president of such corporation, who shall be chosen by and from the board of directors, and such other subordinate officers as such corporations, by its by-laws, may designate, who may be elected or appointed, and shall perform such duties and be required to give security for the faithful performance thereof as such corporation, by its

by-laws, shall require, provided that it shall require a majority of the directors to elect or appoint any officer.

114. Payment of Subscriptions to Capital Stock.

§ 13. The directors of such corporation may require the subscribers to the capital stock of such corporation to pay the amount by them respectively subscribed, in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution or order of such board of directors, the said board shall be authorized to declare such stock and all previous payments thereon forfeited for the use of the corporation; but the said board of directors shall not declare such stock so forfeited until they shall have caused a notice in writing to be served on such stockholders personally, or by depositing the same in a post-office properly directed to the post-office address of such stockholder, or if he be dead, to his legal representatives, with necessary postage for its transmittal properly prepaid, stating therein that in accordance with such resolution, or order, he is requested to make such payment, at a time and place and in the manner to be specified in such notice, and that if he fails to make the same in the manner requested, his stock and all previous payments thereon will be forfeited for the use of such corporation; and thereafter such corporation, should default in payment be made, may sell the same and issue new certificates of stock therefor: *Provided*, that the notice as aforesaid shall be personally served or duly deposited as above required, at least sixty days previous to the day on which such payment is required to be made.

NOTE.—*Allman v. Havana R. & E. R. Co.*, 88 Ill. 521; *Dows v. Naper* 91 Ill. 44.

115. Stock Personality—Transfer of—Use of Funds.

§ 14. The stock of such corporation shall be deemed personal estate and shall be transferable in the manner prescribed by the by-laws of such corporations. But no shares shall be transferable until all previous calls thereon shall have been paid; and it shall not be lawful for such corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them or any of them to use the same for other than the legitimate purposes of such corporation. [As amended by Act approved June 2, 1891. In force July 1, 1891. L. 1891, p. 185.]

NOTE.—The following clause, as contained in the amended Act of June 2, 1891, is repealed by implication: "*Provided, however*, that any railroad company incorporated and organized, or that may hereafter be incorporated and organized under any general or special law of this State, and operating a railroad which now connects or hereafter may connect at any point with any railroad of any other state, shall have power, acting by itself, or jointly with another company or companies, to own and hold the stock and securities of the corporation owning said connecting road, or any part thereof; such ownership or holding to comprise at least two-thirds in amount of the stock of such corporation; but in case of the purchase of stock the company or companies so purchasing shall take and pay for all the shares of the company whose stock is so purchased that may be offered, and the terms of purchase of all shares shall be the same to all stockholders."

This provision is in conflict with the following inhibition: "Unless the consent and approval of the Commission is first obtained * * * no public utility may purchase, acquire, take or receive any stock, stock certificates, bonds, notes or other evidences of indebtedness of any other public utility." (Public Utilities Commission Law, Sec. 27), *ante*, 27.

116. Increase of Capital Stock—Special Meetings, Etc.

Section 15 of the general railroad incorporation Act is also repealed by implication. This section reads as follows: "In case the capital stock of any such corporation shall be found insufficient for constructing and operating its road, such corporation may, with the concurrence of two-thirds in value of all its stock, increase its capital stock, from time to time, to any amount required for the purpose aforesaid. Such increase shall be sanctioned by a vote, in person or by proxy, of two-thirds in amount of all the stock of such corporation, at a meeting of such stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served personally or by depositing the same in a post-office, directed to the post-office address of each of said stockholders severally, with necessary postage for the transmittal of the same, prepaid, at least sixty days prior to the day appointed for such meeting, and by advertising the same in some newspaper published in each county through or

into which the said road shall run or be intended to run (if any newspaper shall be published therein), at least sixty days prior to the day appointed for such meeting. Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock; and at such meeting the corporate stock of such corporation may be so increased, by a vote of two-thirds in amount of the corporate stock of such corporation, to an amount not exceeding the amount mentioned in the notices so given. Should the directors of any such corporation desire at any time to call a special meeting of the stockholders, for any other necessary purpose, the same may be done in the manner in this section provided, and if such meeting be attended by the owners of two-thirds in amount of the stock, in person or by proxy, any other necessary business of such corporation may be then transacted, except the altering, amending or adding to the by-laws of such corporation: *Provided*, such business shall have been specified in the notices given. And the proceedings of any such meeting shall be entered on the journal of the proceedings of such corporation. Every order or resolution increasing the capital stock of any such corporation shall be duly recorded as required in section 2 of this Act." The section is repugnant to the provisions of the Public Utilities Commission Law relating to stocks, bonds and capitalization. (Public Utilities Commission Law, Secs. 20, 21), *ante*, 20, 21.

117. Liability of Executor, Etc.

§ 15½. No person holding stock in any such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such corporation; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly.

118. Liability of Stockholders.

§ 16. Each stockholder of any corporation formed under the provisions of this Act, shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for any and all debts and liabilities of such corporation, until the whole amount of the capital stock of such corporation so held by him shall have been paid.

119. Condemnation of Property.

§ 17. If any such corporation shall be unable to agree with the owner for the purchase of any real estate required for the purposes of its incorporation, or the transaction of its business, or for its depots, station buildings, machine and repair shops, or for right-of-way or any other lawful purpose connected with or necessary to the building, operating or running of said road, such corporation may acquire such title in the manner that may be now or hereafter provided for by any law of eminent domain.

NOTE.—See "Eminent Domain" ch. 47; *City of Moline v. Greene* 252 Ill. 475; *Gillette v. Aurora Rys. Co.* 228 Ill. 261; *South Chicago R. Co. v. Dix* 109 Ill. 237; *Golconda Northern Ry. v. Gulf Lines Connecting R. of Ill.*, 265 Ill. 194; etc.

120. Eminent Domain—Acquiring Material.

§ 18. Any such corporation may, by their agents and employees, enter upon and take from any land adjacent to its road, earth, gravel, stone, or other materials, except fuel and wood, necessary for the construction of such railway, paying, if the owner of such land and the said corporation can agree thereto, the value of such material taken and the amount of damage occasioned thereby to any such land or its appurtenances; and if such owner and corporation can not agree, then the value of such material, and the damage occasioned to such real estate, may be ascertained, determined and paid in the manner that may now or hereafter be provided by any law of eminent domain, but the value of such materials, and the damages to such real estate, shall be ascertained, determined and paid for before such corporation can enter upon or take the same.

NOTE.—See "Eminent Domain" ch. 47; *Chicago & P. R. Co. v. Hildebrand* 136 Ill. 467.

121. Laying Out, Constructing and Using Roads—Fix Rates—Borrow Money.

§ 19. Every corporation formed under this Act shall, in addition to the powers hereinbefore conferred, have power:

First—To cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous

route; and for such purpose, by its officers, agents or servants, may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damages which shall be occasioned thereby.

Second—To take and hold such voluntary grants of real estate and other property as shall be made to it, in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, not incompatible with the terms of the original grant.

Third—To purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway, and the stations and other accommodations necessary to accomplish the object of its incorporation, and to convey the same when no longer required for the use of such railway.

Fourth—To lay out its road, not exceeding one hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of the railway; and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation therefor in manner provided by law.

Fifth—To construct its railway across, along or upon any stream of water, watercourse, street, highway, plank road, turnpike or canal, which the route of such railway shall intersect or touch; but such corporation shall restore the stream, watercourse, street, highway, plank road and turnpike thus intersected or touched, to its former state, or to such state as not unnecessarily to have impaired its usefulness, and keep such crossing in repair: *Provided*, that in no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices, as the natural lay of the land requires for the necessary drainage thereof. Nothing in this Act contained shall be construed to authorize the erection of any bridge, or any other obstruction, across or over any stream navigated by steamboats, at the place where any bridge or other obstructions may be proposed to be placed, so as to prevent the navigation of such stream; nor to authorize the construction of any railroad upon or across any street in any city, or incorporated town or village, without the assent of the corporation of such city, town or village: *Provided*, that in case of the constructing of said railway along highways, plank roads, turnpikes or canals, such railway shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same, or condemn the same under the provisions of any eminent domain law now or hereafter in force in this State.

[See "Cities," etc., ch. 24, § 62, items 26, 27, 90. See note 5 *Jones & Addington's Ann. Statutes* p. 5193.]

Sixth—To cross, intersect, join and unite its railways with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company, with the necessary turnouts, sidings and switches, and other conveniences, in furtherance of the objects of its connections; and every corporation whose railway is or shall be hereafter intersected by any new railway, shall unite with the corporation owning such new railway in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in manner prescribed by law.

NOTE.—With respect to track connections, enlarged powers are conferred, and duties imposed, by the Public Utilities Commission Law. Paragraph 6, above, should be construed in conjunction with sections 45 and 46 of the Public Utilities Commission Law. *Ante*, 45, 46.

Seventh—To receive and convey persons and property on its railway, by the power and force of steam or animals, or by any mechanical power.

Eighth—To erect and maintain all necessary and convenient buildings and stations, fixtures and machinery, for the construction, accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of said railway.

NOTE.—The State Public Utilities Commission has the power to compel a public utility or any two or more public utilities to construct needful additions and im-

provements and make necessary changes, extensions and repairs. (Public Utilities Commission Law, Sec. 50.) *Ante*, 50.

Ninth—To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor subject, nevertheless, to the provisions of any law that may now or hereafter be enacted. [See § 25, 27.]

NOTE.—The Commission may fix rates and regulations, has control over joint rates and is authorized to investigate all existing or proposed interstate charges. The Commission is empowered also to determine the question of the adequacy, inadequacy of the service afforded by a railroad or a street railway. (Public Utilities Commission Law, Secs. 41, 42, 43, 51.) *Ante*, 41, 42, 43, 51.

Paragraph 10, which follows, is impliedly repealed: "**Tenth**—from time to time, to borrow such sums of money as may be necessary for completing, finishing, improving or operating any such railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted by such corporation for the purposes aforesaid; but the concurrence of the holders of two-thirds in amount of the stock of such corporation, to be expressed in the manner and under all the conditions provided in the fifteenth section of this Act, shall be necessary to the validity of any such mortgage; and the order or resolution for such mortgage shall be recorded as provided in the second section of this Act; and the directors of such corporation shall be empowered, in pursuance of any such order or resolution, to confer on any holder of any bond for money so borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of such corporation, at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the by-laws of such corporation." [See § 30-33.]

This portion of the railroad incorporation Act is in conflict with the provisions of the Public Utilities Commission Law pertaining to the creation of indebtedness and the issuance of stocks and bonds. See Public Utilities Commission Law, Secs. 20, 21, 23; *Ante*, 20, 21, 23.

122. What Personal Property.

§ 20. The rolling stock and all other movable property belonging to any such corporation, shall be considered personal property, and shall be liable to execution and sale, in the same manner as the personal property of individuals. [See Const., Art. 11, § 10.]

123. Issue of Stocks and Bonds Limited, Etc.

124. Consolidation.

NOTE.—Sections 21 and 22 of the railroad incorporation Act read: "Issue of stock and bonds limited." § 21. No such corporation shall issue any stock or bonds, except for money, labor or property actually received and applied to the purposes for which such corporation was organized. All stock dividends, and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. [See Const., Art. 11, § 13.] Consolidation. § 22. No such corporation shall consolidate its capital stock with any other railway owning a parallel or competing line. And in no case shall any consolidation take place, except upon sixty days' notice thereof given, which notice shall be given in manner and form as prescribed in the fifteenth section of this Act." [See Const., Art. 11, § 11.]

These sections are superseded by the provisions of the Public Utilities Commission Law relating to the creation of indebtedness and the issuance of stocks and bonds (Public Utilities Commission Law, Secs. 20, 21, 23), *ante* 20, 21, 23, and pertaining to inter-corporate relations (Public Utilities Commission Law, Sec. 27, *Ante*, 27.

125. Annual Reports.

126. Powers of the Legislature, Etc.

Sections 23 and 24 of the old law read: ["Annual report." § 23. The directors of every such corporation shall annually make a report, under oath, to the auditor of public accounts, and to such other officers as may be designated by law, of its actings and doings, which, in part shall include such matters relating to such corporations as may be now or hereafter prescribed by law. [See Const., Art. 11, § 9.] [Power of legislature.] § 24. The General Assembly shall have power to enact, from time to time, laws to prevent and correct abuses, and to prevent unjust discriminations and extortions in the rates of freight and passenger tariff, and to establish reasonable maximum rates of charges for the transportation of persons or property on any railway that may be constructed under the provisions of the Act, and to enforce such laws by adequate penalties to the extent, if necessary, for that purpose, of forfeiture of the property and franchises of any such corporation." [See Const., Art. 11, § 15.] These provisions are made nugatory by virtue of the general powers conferred upon the Public Utilities Commission, and especially the authority to compel accounts to be kept and reports to be submitted (Public Utilities Commission Law, Secs. 11, 19), *ante*, 11, 19, to supervise and inquire into the management of the business of public utilities (Public Utilities Commission Law, Sec. 8,) *ante*, 8, to fix rates and regulations, including joint rates and interstate charges (Public Utilities Commission Law, Secs. 41, 42, 43), *ante*, 41, 42, 43, and to enforce arrangements for a reasonable and efficient interchange of traffic (Public Utilities Commission Law, Sec 44.) *Ante*, 44.

127. Cumulative Voting.

§ 25. In all elections for directors or managers of such railway corporations every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors, multiplied by the number of his shares of stock, shall equal; or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner. [See § 8; also, Const., Art. 11, § 3.]

NOTE.—Section 25½ of the railroad incorporation Act reads: ["Rates when aid induced."] § 25½. In all cases when any corporation organized under this Act to induce aid in its construction, either by donation or subscription to its capital stock, shall desire to fix the rates for any period of time for the transportation of passengers or freight, such corporation may adopt a resolution fixing such rates, and the time for which the same is to be fixed, and have the same recorded in the office of the recorder of deeds in the several counties through which said road is proposed to be run; and during the time for which they are fixed, said rates shall in no case be amended by said corporation or its successors: *Provided*, that said rates shall not exceed the rates allowed by law." This section is repugnant to the provisions of the Public Utilities Commission Law giving the Commission power to fix rates and regulations, to control joint rates and have supervision over interstate charges, and is therefore impliedly repealed. See Public Utilities Commission Law, Secs. 41, 42, 43. *Ante*, 41, 42, 43.

128. Limitation—Beginning and Completion.

§ 26. If any railway corporation organized under this Act, shall not, within two years after its articles of association shall be filed and recorded as provided in the second section of this Act, begin the construction of its road, and expend thereon twenty-five per cent on the amount of its capital, within five years after the date of its organization, or shall not finish the road and put it in operation within ten years from the time of filing its articles of association, as aforesaid, its corporate existence and powers shall cease.

NOTE.—See *Chicago & E. I. R. C. v. Wright* 153 Ill. 307; *Morrison v. Forman* 177 Ill. 427.

129. Repeal—Saving—Benefits of Act, Etc.

§ 27. That an Act entitled "An Act to amend 'An Act to provide for a general system of railroad incorporations,' approved November 5, 1849," approved February 13, 1857, and also all of an Act entitled "An Act to provide for ageneral system of railroad incorporations," approved November 5, 1849, except the sections of the last named Act numbered 34, 35, 36, 37, 38, 39, 40, 41, 42 and 45,* and all laws in conflict with the provisions of this Act, be and the same are hereby repealed: *Provided, however*, that all general laws of this State in relation to railroad corporations, and the powers and duties thereof, so far as the same are not inconsistent with the provisions of this Act, shall remain in force and be applicable to railroad incorporations organized under this Act. The repeal of the Acts and parts of Acts mentioned in this section shall not be construed so as to effect any rights acquired thereunder; but all corporations formed or attempted to be formed under such Acts or parts of Acts, notwithstanding any defects or omissions in their articles of association, may, if they will adopt or have adopted this Act, be entitled to proceed thereunder, and have all the benefits of this Act; and all such corporations that have adopted or that will adopt this Act, are hereby declared legal and valid corporations, within the provisions of this Act, from the date of the filing of their respective articles of association. And the fixing of the termini by any such corporation shall have the same effect as if fixed by the General Assembly: *Provided*, that all corporations to which this Act shall apply shall be held liable for, and shall carry out and fulfill all contracts made by them, or for, or on their behalf, or of which they have received the benefit, whether such corporation, at the time of the making of such contract or contracts, was organized, or had attempted to organize, under the general laws of the State of Illinois, or not; whether said contract was for right-of-way, work and labor done, or materials furnished, or for the running of trains or carrying passengers or

freight upon such road, or upon any other road in connection therewith. And if such corporation has or does take possession of or use such right-of-way, labor or material so furnished by other persons or corporations, it shall be evidence of its acceptance of such contract so entered into by such person or corporation with said persons or corporations for its benefit. And upon said corporation failing to pay said sum as it ought equitably to pay for such right-of-way, labor or materials, or fail to carry out such contracts as aforesaid, so made with persons or corporations, it shall be held liable in an action at law or in chancery for the recovery of the value of said right-of-way, labor or materials, and for damages for non-fulfillment of such contract, in any court of competent jurisdiction in any county through which the road of such corporation may be located: *And, provided, further*, that this Act shall not in any manner legalize the subscription of any township, county or city to the capital stock of any railroad company, nor authorize the issuing of any bonds by any township, city or county in payment of any subscription or donation. [As amended by Act approved April 26, 1873. In force July 1, 1873.]

NOTE.—The whole of the Act of November 5, 1849, was repealed March 31, 1874. [See Hurd's Revised Statutes, 1917, Ch. 131, Sec. 135.]

AN ACT to require corporations to have and maintain a public office, or place in the State of Illinois where transfers of stock may be made, and to enforce the provisions of section nine (9), article eleven (11) of the Constitution of Illinois. [Approved June 18, 1883. In force July 1, 1883. L. 1883, p. 128; Legal News Ed., p. 102.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 30-34.)

130. Shall Have Public Office—Book with Transfers of Stock Registered.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Each and every railroad corporation, organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office, or place in this State for the transaction of its business, where transfers of shares of its stock shall be made by such railroad corporation, upon the request of the owner of shares thereof, presenting the certificate thereof. Every such railroad corporation shall keep a book in which the transfers of shares of its stock shall be registered, and another book containing the names of its stockholders, which book shall be open to the examination of the stockholders.

NOTE.—It is provided by the Public Utilities Commission Law that "each public utility shall have an office in one of the cities, villages or incorporated towns in this State in which its property or some part thereof is located, and shall keep in said office all such books, accounts, papers, records and memoranda as shall be ordered by the Commission to be kept within the State." Further: "The address of such office shall be filed with the Commission. No books, accounts, papers, records or memoranda ordered by the Commission to be kept within the State shall be at any time removed from the State, except upon such conditions as may be prescribed by the Commission." (Public Utilities Commission Law, Sec. 16.) *Ante*, 16.

131. Fines for Failure to Comply.

§ 2. Any railroad corporation—organized or doing business in this State under the laws or authority thereof, or failing to comply with the provisions of section one (1), of this Act, within ninety (90) days after the taking effect of this Act, shall upon conviction thereof, be fined in any sum not less than one thousand dollars (\$1,000), nor more than two thousand dollars (\$2,000). In case any such railroad corporation shall fail to comply with the provisions of said section one (1) within six months after the taking effect of this Act it shall, upon conviction thereof, be fined in any sum, not less than two thousand dollars (\$2,000), nor more than four thousand dollars (\$4,000); and for every year after the taking effect of this Act, any such railroad corporation shall fail to comply with the provisions of said section one (1), it shall, upon conviction, be fined not less than four thousand dollars (\$4,000): *Provided*, that in all cases under this Act either party shall have the right of trial by jury:

NOTE.—Sections 3, 4 and 5 of this Act read as follows: ["Fines recovered in action of debt."] § 3. The fines hereinbefore provided for, may be recovered in an action of debt in the name of the People of the State of Illinois. [Duty of

commissioners.] § 4. It shall be the duty of the Railroad and Warehouse Commissioners to personally investigate and ascertain whether the provisions of this Act are violated by any railroad corporation in this State; and whenever the facts in any manner ascertained by said commissioners shall, in their judgment, warrant such prosecution, it shall be the duty of said commissioners to immediately cause suits to be commenced and prosecuted against any railroad corporation which may violate the provisions of this Act. Said suits and prosecutions may be instituted in any county in this State, through or into which the line of the railroad corporation sued for violating this Act may extend. And such Railroad and Warehouse Commissioners are hereby authorized to employ counsel to assist the Attorney General in conducting such suit on behalf of the State. No such suits commenced by said commissioners shall be dismissed, except said Railroad and Warehouse Commissioners and the Attorney General shall consent thereto. [Fines to be used for county purposes.] § 5. All fines recovered under the provisions of this Act shall be paid into the county treasury of the county in which the suit is tried, by the person collecting the same in the manner now provided by law, to be used for county purposes." These provisions are annulled by virtue of section 79 of the Public Utilities Commission Law, making it the duty of the Commission to enforce the provisions of the Constitution and statutes affecting public utilities; section 81 of the Public Utilities Commission Law, transferring to the Commission the jurisdiction formerly attaching to the Board of Railroad and Warehouse Commissioners; and section 78 of the Public Utilities Commission Law, prescribing the mode of recovering penalties. *Ante*, 8, 79.

The following enactment of the Legislature is repealed by implication: "An Act to enable railroad companies to borrow money and to mortgage their property and franchises therefor," approved May 7, 1873; in force July 1, 1873. (Hurd's Revised Statutes 1917, Ch. 114, Secs. 35, 36, 37, 38.) The Act is repugnant to the provisions of the Public Utilities Commission Law respecting the creation of indebtedness and the issuance of bonds. (Public Utilities Commission Law, Secs. 20, 21, 23.) *Ante*, 20, 21, 23.

IV. RAILROADS—CONSOLIDATION.

AN ACT to provide for the consolidation of certain railroad corporations. [Approved June 14, 1883. In force July 1, 1883. L. 1883, p. 124; Legal News Ed., p. 101.] Hurd's Revised Statutes 1917, Ch. 114, Secs. 39-41.)

132. What Railroads May Consolidate—How.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Whenever any railroad which is situated partly in this State, and partly in one or more other states, and heretofore owned by a corporation formed by consolidation of railroad corporations of this and other states, has been sold pursuant to the decree of any court or courts of competent jurisdiction, and the same has been purchased as an entirety, and is now, or hereafter may be, held in the name or as the property of two or more corporations incorporated respectively under the laws of two or more of the states in which said railroad is situated, it shall be lawful for the corporation so created in this State to consolidate its property, franchises and capital stock with the property, franchises and capital stock of the corporation or corporations of such other state or states in which the remainder of such railroad is situated, and upon such terms as may be agreed upon between the directors, and approved by the stockholders owning not less than two-thirds in amount of the capital stock of such corporations. Such approval may be given by the stockholders of such corporation of this State at any time, in writing or by vote, at any annual or special meeting, upon sixty days' notice given by publication in any newspaper published in the county where the general office of such company is situated, and such meeting is to be held: *Provided*, that no consolidation shall take place with any railroad owning a parallel or competing line; and a majority of the directors of such consolidated company shall be citizens and residents of this State; and where the line of the road of the original company has been located in this State and aid in the construction thereof voted by any municipality by way of subscription or donation and received by the company, and the road as so located not yet completed, then the consolidated company shall have no power or right to change such line as so located so as to make the same substantially different from the line so located at the time the aid was voted.

NOTE.—The foregoing section should be construed in connection with section 22 of the Public Utilities Commission Law, concerning consolidation and reorganization, and is to be understood as being subject to the provisions thereof. It

is governed also by sections 20 and 21 of the Public Utilities Commission Law, respecting the creation of indebtedness and the issuance of bonds. *Ante*, 20, 21, 22. See *American Loan & Trust Co. v. Minnesota & N. W. R. Co.*, 157 Ill. 641.

133. When Consolidation to Take Effect.

§ 2. Such consolidation shall take effect upon the filing and recording of such articles of consolidation in the office of the Secretary of State of the State of Illinois, and a certified copy thereof in the office of the recorder of the various counties in which said railroad is situated. A certified copy of such articles of consolidation, under seal of the Secretary of State, shall be deemed and taken to be *prima facie* evidence of the existence of such consolidated corporation.

NOTE.—See note under preceding section.

134. List of Stockholders—Rights Saved.

§ 3. Such consolidated corporation shall at all times keep a general office within this State, at which shall be kept a complete list of all stockholders of such corporations, their places of residence, the amount of stock owned by each, and where the stock of such corporation may be registered and transferred: *Provided*, that nothing contained in this bill shall be construed to impair or affect the rights of any party holding unsettled claims against any of the corporations to be consolidated.

NOTE.—The following enactment is repealed by implication: "An Act authorizing railroad companies in consolidating so as to form an interstate line to fix the terms and conditions of such consolidation and to retire their preferred stock, and to provide for the issue of new preferred stock and fix the par value thereof, approved and in force June 17, 1893, (Hurd's Revised Statutes, 1917, Ch. 114, sections 42, 43.) The Act is in conflict with the provisions of the Public Utilities Commission Law respecting the consolidation and reorganization of Utilities. (Public Utilities Commission Law, Sec. 22.) *Ante*, 22.

The following enactment is repealed by implication: "An Act to enable railroad companies to enter into operative contracts and to borrow money," approved February 12, 1855. (Hurd's Revised Statutes, 1917, ch. 114, secs. 44, 45.) The Act is repugnant to the provisions of the Public Utilities Commission Law respecting intercorporate relations. (Public Utilities Commission Law, sec. 27.) *Ante*, 27.

AN ACT to facilitate travel and transportation. Approved and in force Feb. 25, 1867. L. 1867, p. 174. (Hurd's Revised Statutes, 1917, Ch. 114, Sec. 46.)

135. Use of Bridges.

§ 1. Railroads terminating, or to terminate at any point on any line of continuous railroad thoroughfare where there now is or shall be a railroad bridge for crossing of passengers and freight in cars over the same as part of such thoroughfare, shall make convenient connections of such railroads, by rail, with the rail of such bridge; and such bridge shall permit and cause such connections of the rail of the same with the rail of such railroads, so that by reason of said railroads and bridge, there shall be uninterrupted communication over such railroads and bridge as public thoroughfares. But by such connections no corporate rights shall be impaired.

NOTE.—See provisions in Public Utilities Commission Law pertaining to track connections. (Public Utilities Commission Law, Secs. 45, 46.) *Ante*, 45, 46.

The following Acts are repealed by implication: "An Act relating to lessees in this State of railroads in adjoining states," approved March 30, 1875; in force July 1, 1875 (Hurd's Revised Statutes, 1917, Ch. 114, sec. 47), and "An Act to facilitate the carriage and transfer of passengers and property by railroad companies," approved May 24, 1877; in force July 1, 1877. (Hurd's Revised Statutes, 1917, Ch. 114, sec. 49.) Both Acts are in conflict with secs. 28 and 29 of the Public Utilities Commission Law pertaining to the transfer of franchises, and with sec. 27 of the Public Utilities Commission Law pertaining to intercorporate relations. *Ante*, 27, 28, 29.

AN ACT compelling railroad companies in this State to build and maintain depots for the comfort of passengers and for the protection of shippers of freight at towns and villages on the line of their roads. [Approved May 23, 1877. In force July 1, 1877. L. 1877, p. 165; L. gal News Ed., p. 154.] (Hurd's Revised Statutes 1917, Ch. 114, Secs. 50, 51.)

136. Railroads Required to Build and Maintain Depots.

§ 1. That all railroads in this State carrying passengers or freight shall, and they are hereby required to build and maintain depots for the

comfort of passengers and for the protection of shippers of freight, where such railroad companies are in the practice of receiving and delivering passengers and freight, at all towns and villages, having a population of two hundred (200) or more, on the line of their roads, and roads leased or operated by them. [As amended by Act approved June 21, 1895. In force July 1, 1895; L. 1895, p. 294.]

137. Penalty.

§ 2. Any railroad company in this State failing to comply with the provisions of the preceding section after this Act shall go into effect, and within ninety days after notice in writing of its failure to comply with the provisions of said section shall have been served upon any agent of said railroad by the authorized agent of any town or village aggrieved, shall pay for each and every day it shall neglect, the sum of fifty dollars (\$50) to be recovered in an action of debt before any justice of [the] peace, in the name of the People of the State of Illinois, in any town or village aggrieved. Said penalty to be paid to the said town or village for the school fund.

NOTE.—See sec. 50, of the Public Utilities Commission Law, as to the power of the Commission to compel the erection of additions and new structures and the making of needful improvements and alterations. *Ante*, 50.

The following Act is repealed by implication: "An Act concerning contracts for the conditional sale or lease of railroad, street car equipment and rolling stock and providing for the record thereof," approved June 20, 1893 in force July 1, 1893. (Hurd's Revised Statutes, 1917, Ch. 114, secs. 52, 53, 54.) The Act is inconsistent with sec. 27 of the Public Utilities Commission Law. *Ante*, 27.

See *People v. Chicago & Alton R. Co.*, 130 Ill. 175; *Chicago & Alton R. Co. v. People* 152 Ill. 230; *People v. Louisville & N. R. Co.*, 120 Ill. 48; *Mobile & O. R. Co. v. People*, 132 Ill. 559; *Chicago & Alton R. Co. v. Walker* 217 Ill. 605; etc.

V. RESIDENCE OF DIRECTORS OF RAILROADS UNDER SPECIAL CHARTERS.

AN ACT in relation to the residence of directors on railroads organized under special charters. [Approved and in force June 17, 1893. L. 1893, p. 164.] (Hurd's Revised Statutes 1917, Ch. 114, Sec. 55.)

138. Defines Directors' Residence.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* In all cases where any railroad company organized and doing business under any law of this State by which it is required that a majority of the directors of such company shall reside in counties along the line of the road, such requirements shall be construed to require such majority of such directors to reside in some or all of the counties along the line of road in this State actually operated by such company, whether such line be owned by such company or leased thereby, and shall not require that any of the directors of such company shall reside in counties along such part of the line of the road of such company as may have been sold and transferred to any other corporation.

139. Emergency.

§ 2. WHEREAS, An emergency exists, therefore, this law shall take effect and be enforced from and after its passage.

VI. FENCING AND OPERATING RAILROADS.

AN ACT in relation to fencing and operating railroads. [Approved March 31, 1874. In force July 1, 1874.] (Hurd's Revised Statutes 1917, Ch. 114, Secs. 62-76.)

140. Fencing Track—Farm Crossings—Cattle Guards.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every railroad corporation, shall, within six months after any part of its line is open for use, erect and thereafter maintain fences on both sides of its road or so much thereof as is open

for use, suitable and sufficient to prevent cattle, horses, sheep, hogs or other stock from getting on such railroad, except at the crossings of public roads and highways, and within such portion of cities and incorporated towns and villages as are or may be hereafter laid out and platted into lots and blocks, with gates or bars, at the farm crossings of such railroad, which farm crossings shall be constructed by such corporation when and where the same may become necessary, for the use of the proprietors of the land adjoining such railroad; and shall also construct, where the same has not already been done, and thereafter maintain at all road crossings now existing or hereafter established, cattle-guards suitable and sufficient to prevent cattle, horses, sheep, hogs and other stock from getting on such railroad; and when such fences or cattle-guards are not made as aforesaid, or when such fences or cattle-guards are not kept in good repair, such railroad corporations shall be liable for all damages which may be done by the agents, engines or cars of such corporation, to such cattle, horses, sheep, hogs or other stock thereon, and reasonable attorney's fees in any court wherein suit is brought for such damages, or to which the same may be appealed; but where such fences and guards have been duly made and kept in good repair, such railroad corporation shall not be liable for any such damages, unless negligently or willfully done. [As amended by Act approved May 29, 1879. In force July 1, 1879. L. 1879, p. 224.]

NOTE.—See *Cairo & St. L. R. Co. v. Warrington* 92 Ill. 157; *Lynch v. Baltimore & O. S. W. R. Co.*, 240 Ill. 567; *Terre Haute & I. R. Co. v. Williams*, 172 Ill. 379; *Bischof v. Illinois S. R. Co.*, 232 Ill. 446; *Rockford, R. I. & S. L. R. Co. v. Lynch*, 67 Ill. 149; etc.

141. Right of Way Clear of Combustibles.

§ 1½. It shall be the duty of all railroad corporations to keep their right-of-way clear from all dead grass, dry weeds, or other dangerous combustible material, and for neglect shall be liable to the penalties named in section 1.

NOTE.—See *Cleveland, C. C. & St. Louis Ry. Co. v. Hamilton* 200 Ill. 633 as to constitutionality. See also *Hertz v. Chicago I. & S. R. Co.* 154 Ill. App. 80; *Indiana, B. & W. R. Co. v. Nicewander* 21 Ill. App. 305; *Chicago & E. I. R. Co. v. Goyette* 133 Ill. 21; etc.

142. Allowing Animal on Right of Way—Breaking Fence, Etc.

§ 2. If any person shall ride, lead or drive any horse or other animal upon the track or lands of such railroad corporation, and within such fences or guards (except to cross at farm or road crossings), without the consent of the corporation; or shall tear down, or otherwise render insufficient to exclude stock, any part of such fence, guards, gates or bars—or shall leave the gates or bars at farm crossings open or down—or shall leave horses or other animals standing upon farm or road crossings, he shall be liable to a penalty of not less than \$10, nor more than \$100, to be recovered in an action of debt, before any court having competent jurisdiction thereof, in the name of such railroad corporation, and for the use of the school fund in the county, and shall pay all damages which shall be sustained thereby to the party aggrieved. [L. 1855, p. 174, § 3.]

143. When Company Neglects to Build—Notice.

§ 3. Whenever a railroad corporation shall neglect or refuse to build or repair such fence, gates, bars or farm crossings, as provided in this Act, the owner or occupant of the lands adjoining such railroad, or over or through which the railroad track is or may be laid, may give notice, in writing, to such corporation, or the lessees thereof, or the persons operating such railroad, to build such fence, gate, bars or farm crossings within thirty days (or repair said fence, gate, bars or farm crossings, as the case may be, within ten days), after the service of said notice. Such notice shall describe the lands on which said fence, gates, bars or farm crossings are required to be built or repaired. Service of such notice may be made by delivering the same to any station agent of said railroad corporation or the persons operating such railroad. [L. 1869, p. 315, § 1.]

NOTE.—See *Shea v. Cleveland, C. C. & St. L. R. Co.*, 250 Ill. 97; *Chicago & A. R. Co. v. Averill* 127 Ill. App. 275, Affd. 224 Ill. 516; etc.

144. Adjoining Owner May Build and Recover.

§ 4. If the party so notified shall refuse to build or repair such fence, gates, bars or farm crossings, in accordance with the provisions of this Act, the owner or occupant of the land required to be fenced shall have the right to enter upon the land and track of said railroad company, and may build or repair such fence, gates, bars or farm crossings, as the case may be, and the person so building or repairing such fence, gates, bars or farm crossings, shall be entitled to double the value thereof from such corporation, or party actually occupying or using such railroad, to be recovered, with interest at one per cent per month, as damages, from the time such fence, gates, bars or farm crossings were built or repaired, in any court of competent jurisdiction, together with costs, to be taxed by the court. [L. 1869, p. 315, § 2.]

NOTE.—See *Toledo P. & W. R. Co. v. Pence* 68 Ill. 524; *Indiana & I. S. R. Co. v. Sampson* 31 Ill. App. 513 dismissed 132 Ill. 527; *Wabash St. L. & P. R. Co. v. Zeigler* 108 Ill. 304; *Ohio & M. R. Co. v. People* 121 Ill. 483, Affg. 21 Ill. App. 23; etc.

145. Boards at Crossings.

§ 5. Every railroad corporation shall cause boards, well supported by posts or otherwise, to be placed and constantly maintained upon each public road or street, where the same is crossed by its railroad on the same level. Said boards shall be elevated so as not to obstruct the travel, and to be easily seen by travelers. On each side of said boards shall be painted in capital letters, of at least the size of nine inches each, the words "railroad crossing," or "look out for the cars." This section shall not apply to streets in cities or incorporated towns or villages, unless such railroad corporation shall be required to put up such boards by the corporate authorities of such cities, towns or villages: *Provided*, that when warning boards have already been erected, under existing laws, the maintenance of the same shall be a sufficient compliance with the requirements of this section. [2d L. 1849, p. 32, § 39.]

NOTE.—See *Chicago & A. R. Co. v. Robinson* 8 Ill. App. 140; *Illinois Cent. R. Co. v. Bentley* 64 Ill. 438; etc.

146. Bell and Whistle—Crossings.

§ 6. Every railroad corporation shall cause a bell of at least thirty pounds weight, and a steam whistle placed and kept on each locomotive engine, and shall cause the same to be rung or whistled by the engineer or fireman, at the distance of at least eighty rods from the place where the railroad crosses or intersects any public highway, and shall be kept ringing or whistled until such highway is reached. [L. 1869, p. 303, § 1.]

NOTE.—See *Chicago Junct. R. Co. v. Reinhardt* 139 Ill. App. 53, Affd. 235 Ill. 576; *Pittsburg, C. O. & St. L. R. Co. v. Robson* 204 Ill. 254; *Illinois Cent. R. Co. v. Schmitt* 100 Ill. App. 490; *Chicago, P. & St. Louis R. Co., v. Zetsche* 135 Ill. App. 622; *Chicago, B. & Q. R. Co. v. Dougherty* 110 Ill. 521; etc.

147. Killing Stock—Frightening Team.

§ 6½. Any engineer, or person having charge of and running any railroad engine or locomotive, who shall wilfully or maliciously kill, wound or disfigure any horse, cow, mule, hog, sheep or other useful animal, shall, upon conviction, be fined in the sum of not less than the value of the property so killed, wounded or disfigured, or confined in the county jail for a period of not less than ten days; and any such engineer or fireman, or other person, who shall wantonly or unnecessarily blow the engine whistle, so as to frighten any team, shall be liable to a fine of not less than \$10 nor more than \$50. [See "Criminal Code," Ch. 38, § 191.]

148. Starting Train Without Signal—Penalty.

§ 7. If any engineer on any railroad shall start his train at any station, or within any city, incorporated town or village, without ringing the bell or sounding the whistle a reasonable time before starting, he shall forfeit a sum not less than \$10 nor more than \$100, to be recovered in an action of debt in the name of the People of the State of Illinois, and such corporation shall also forfeit a like sum, to be recovered in the same manner.

NOTE.—See *Chicago, B. & Q. R. Co. v. Murowski* 179 Ill. 77; *Maney v. Chicago, B. & Q. R. Co.* 49 Ill. App. 105; etc.

149. Approaches at Crossings.

§ 8. Hereafter, at all of the railroad crossings of highways and streets in this State, the several railroad corporations in this State shall construct and maintain said crossings, and the approaches thereto, within their respective rights-of-way, so that at all times they shall be safe as to persons and property. [L. 1869, p. 312, § 1.]

NOTE.—See *Bloomington v. Illinois Cent. R. Co.* 154 Ill. 539; *People v. Chicago & A. R. Co.*, 67 Ill. 118; *Williams v. Chicago & Northwestern R. Co.*, 132 Ill. App. 274, Affd. 228 Ill. 593; etc.

150. Neglect to Make, Etc., Crossings—Notice.

§ 9. Whenever any railroad corporation shall neglect to construct and maintain any of its crossings and approaches, as provided in section 8 of this Act, it shall be the duty of the proper public authorities, having the charges of such highways or streets, to notify, in writing, the nearest agent of said railroad corporation of the condition of said crossing or approaches, and direct the same to be constructed, altered or repaired in such manner as they shall deem necessary for the safety of persons and property.

151. When Company Neglects, Authorities to Construct, Etc.

§ 10. If any railroad corporation of this State shall, after having been notified, as provided in section 9 of this Act, neglect or refuse to construct, alter or repair such crossing or approaches within thirty days after such notice, then said public authorities shall forthwith cause such construction, alteration or repairs to be made.

152. Company to Pay Expense and \$100.

§ 11. Said railroad corporation shall be holden for all necessary expenses incurred in making such construction, alteration and repairs, and in addition thereto shall be liable to a fine of \$100 for such neglect to comply with the requirements of this Act, which fine shall be enforced by the said public authorities, in the name of the People of the State of Illinois, before any court of competent jurisdiction in the county. Such fine, when collected, to be paid into the treasury of the authorities enforcing the fine.

153. Draw Bridge—Railroad Crossing, Etc.—Stop.

§ 12. All trains running on any railroad in this State, when approaching a crossing with another railroad upon the same level, or when approaching a swing or draw bridge, in use as such, shall be brought to a full stop before reaching the same, and within eight hundred (800) feet therefrom, and the engineer or other person in charge of the engine attached to the train shall positively ascertain that the way is clear and that the train can safely resume its course before proceeding to pass the bridge or crossing. [As amended by Act approved June 19, 1885. In force July 1, 1885.]

154. Penalty.

§ 13. Every engineer or other person having charge of such engine, violating the provisions of the preceding section, shall be liable to a penalty of two hundred dollars for each offense, to be recovered in an action of debt in the name of the People of the State of Illinois, and the corporation on whose road such offense is committed, shall be liable to a penalty of not exceeding two hundred dollars, to be recovered in like manner, the amount so recovered to be paid into the treasury of the county in which the offense occurs, but no recovery shall be had in any case for any offense committed more than sixty days prior to the commencement of the action. The provisions of this and of the preceding section shall extend to and govern all cases of neglect or failure to stop the train as required by law before passing any bridge or railroad crossing, whether occurring before or after the said provisions shall take effect, and no Act or part of an Act inconsistent with such operation and effect being given to this law shall in any way apply

hereto. [As amended by Act approved June 19, 1885. In force July 1, 1885. L. 1885, Legal News Ed., p. 178.]

NOTE.—*Mix v. Illinois Cent. R. Co.* 116 Ill. 502; *Indianapolis & St. L. R. Co. v. People* 91 Ill. 452; etc

AN ACT in regard to the dangers incident to railroad crossings on the same level. [Approved June 2, 1887. In force July 1, 1887. L. 1887, p. 252.] (Hurd's Revised Statutes 1917, Ch. 114, Secs. 76a-102.)

155. Railroads Crossing Each Other on Same Level—Requirements.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That when and in case two or more railroads crossing each other at a common grade, or any railroad crossing any stream or harbor by swing or draw bridge shall, by a system of interlocking and automatic signals, or by other works, fixtures and machinery to be erected by them, or either of them, render it safe for engines and trains to pass over such crossing or bridge without stopping and such system of interlocking and signals, works or fixtures shall be first approved by the Railroad and Warehouse Commissioners, or any two of them, and a plan of such interlocking and signals, works and fixtures for such crossing designating the plan of crossing shall have been filed with such Railroad and Warehouse Commissioners then, and in that case, it is hereby lawful for the engines and trains of any such railroad or railroads to pass over said crossing or bridge without stopping, any law, or the provisions of any law, now in force to the contrary notwithstanding; and all such other provisions of laws contrary thereto are hereby declared not to be applicable in such case: *Provided*, that the said Railroad and Warehouse Commissioners shall have power in case such interlocking system, in their judgment, shall by experience prove to be unsafe or impracticable to order the same to be discontinued. [As amended by Act approved May 28, 1891. In force July 1, 1891. L. 1891, p. 179.]

NOTE.—The Public Utilities Commission Law, after expressly repealing the Act creating the Board of Railroad and Warehouse Commissioners and the Act defining and regulating express companies, provides that "nothing in this Act shall be construed to repeal any other Act or part thereof conferring power on said Board of Railroad and Warehouse Commissioners except such as are in direct conflict herewith, but the rights, powers and duties conferred by law upon the Board of Railroad and Warehouse Commissioners shall be continued in full force and transferred to the State Public Utilities Commission, it being the intent of this Act to substitute the State Public Utilities Commission for the said Board of Railroad and Warehouse Commissioners." (Public Utilities Commission Law, Sec. 81.) *Ante*, 81. The jurisdiction, therefore, conferred upon the Board of Railroad and Warehouse Commissioners by virtue of the above section of the railroad statute is transferred to the State Public Utilities Commission.

156. Civil Engineer to Examine System—Compensation.

§ 2. The said Railroad and Warehouse Commissioners may appoint a competent civil engineer to examine such proposed system and plans, and report the result of such examination for the information of such Railroad and Warehouse Commissioners; and said Railroad and Warehouse Commissioners are hereby authorized to allow and reward five dollars per day as a compensation for the services of such civil engineer, of such reasonable sum as such commissioners shall deem fit, and to allow and reward such other and further sums, as they shall deem fit to pay all other fees, costs and expenses to arise under said application, to be paid by the railroad company or companies in interest, to be taxed and paid or collected as in other cases. And the said Railroad and Warehouse Commissioners are also empowered on application for their approval of any such system of interlocking and signals, works or fixtures, to require of the applicant security for such fees, costs and expenses, or the deposit, in lieu thereof, of a sufficient amount in money for that purpose to be fixed by them.¹

NOTE.—See note under preceding section.

157. Not to Obstruct Highway—Stoning Train.

§ 14. No railroad corporation shall obstruct any public highway by stopping any train upon, or by leaving any car or locomotive engine standing on its tracks where the same intersects or crosses such public highways,

except for the purpose of receiving or discharging passengers or freight, or for taking in or setting out cars, or to receive the necessary fuel and water, and in no case to exceed ten minutes for each train, car or locomotive engine.

Any person who shall throw any stone, or other hard substance at any railroad car, train or locomotive, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not more than \$200, and shall stand committed to the county jail until such fine and costs shall be paid. [As amended by Act approved June 21, 1895. In force July 1, 1895; L. 1895, p. 293.]

NOTE.—*Illinois Cent. R. Co. v. People* 49 Ill. App. 542; *People v. Collins* 160 Ill. App. 225; *Houren v. Chicago M. & St. P. R. Co.*, 236 Ill. 620; etc.

158. Penalty.

§ 15. Every engineer or conductor violating the provisions of the preceding section shall, for each offense, forfeit the sum of not less than \$10 nor more than \$100, to be recovered in an action of debt, in the name of the People of the State of Illinois, for the use of any person who may sue for the same, and the corporation on whose road the offense is committed shall be liable for the like sum.

159. Minors to Keep Off Cars.

§ 17. No person or minor shall climb, jump, step, stand upon, cling to, or in any way attach himself to any locomotive engine or car, either stationary or in motion, upon any part of the track of any railroad, unless in so doing he shall be acting in compliance with law, or by permission, under the lawful rules and regulations of the corporation then owning or managing such railroad.

160. Railroad Agent to Make Complaint.

§ 18. Whenever any officer, agent, or employee of any railroad corporation shall have any information that any person or minor has violated any of the provisions of the preceding section, and has thereby endangered himself, or caused reasonable alarm to others, said officer, agent, or employee shall, without unnecessary delay, make complaint of such offense against such person or minor before some justice of the peace.

161. Penalty.

§ 19. Any person or minor who shall violate any of the provisions of the seventeenth section of this Act shall be punished by a fine not exceeding \$25, to be recovered in an action of debt, in the name of the People of the State of Illinois, before a justice of the peace, or, upon conviction, by imprisonment in the county jail, or other place of confinement, for a period not exceeding twelve hours.

162. Three Preceding Sections Posted.

§ 20. The several railroad corporations in this State shall, without unnecessary delay, cause printed copies of the three preceding sections of this Act to be kept posted in conspicuous places at all their stations along their lines of railroad in this State. Every railroad corporation that shall neglect to post, and keep posted, such notices as required by this section, shall, for each offense, forfeit the sum of \$50, to be recovered in an action of debt, in the name of the People of the State of Illinois.

163. No Freight Cars Behind Passenger Cars.

§ 21. In no train shall freight, merchandise or lumber cars be run in the rear of passenger cars, and if such cars, or any of them, shall be so run, the officer or agent who so directed, or knowingly suffered such arrangement to be made, shall each be deemed guilty of a misdemeanor, and punished accordingly. [2d L. 1849, p. 31, § 37.]

NOTE.—See *Illinois Cent. R. Co. v. Byrne* 205 Ill. 9, Affg. 105 Ill. App. 96.

164. Must Furnish Cars and Transport Passengers and Property—When.

§ 22. Every railroad corporation in the State shall furnish, start and run cars for the transportation of such passengers and property as shall,

within a reasonable time previous thereto, be ready or be offered for transportation at the several stations on its railroads and at the junctions of other railroads, and at such stopping places as may be established for receiving and discharging way-passengers and freights; and shall take, receive, transport and discharge such passengers and property, at, from and to such stations, junctions and places, on and from all trains advertised to stop at the same for passengers and freight, respectively, upon the due payment, or tender of payment of tolls, freight or fare legally authorized therefor, if payment shall be demanded, and such railroad companies shall at all junctions with other railroads, and at all depots where said railroad companies stop their trains regularly to receive and discharge passengers in cities and villages, for at least one-half hour before the arrival of, and one-half hour after the arrival of any passenger train, cause their respective depots to be open for the reception of passengers; said depots to be kept well lighted and warmed for the space of time aforesaid. [As amended by Act approved June 25, 1883. In force July 1, 1883. L. 1883, p. 125.]

NOTE.—See Sec. 51 of the Public Utilities Commission Law, giving the Commission power to compel the maintenance of an adequate service. *Ante*, 51.

See *Mulberry Hill Coal Co. v. Illinois Cent. R. Co.*, 257 Ill. 80 as to constitutionality; *Donovan v. Pennsylvania Co.* 199 U. S. 279, 50 L. Ed. 192; *People v. St. Louis, A. & T. H. R. Co.* 176 Ill. 512; *People v. E. St. Louis & S. R. Co.* 122 Ill. App. 431; *Litchfield & Madison R. Co. v. People* 222 Ill. 242 relative to duty to carry; *People v. Illinois Cent. R. Co.* 241 Ill. 471, Affg. 143 Ill. App. 337 relative to duty to furnish cars; etc.

165. Depots to be Kept Open—Penalty.

§ 23. In the case of the refusal of such corporation or railroad company, or its agents, to take, receive and transport any person or property, or to deliver the same within a reasonable time, at their regular or appointed time and place, or to keep their said depots open, lighted and warmed according to the provisions of the preceding section of this Act, such corporation or railroad company shall pay to the party aggrieved, treble the amount of damages sustained thereby, with costs of suit; and in addition thereto, said corporation or railroad company shall forfeit a sum of not less than twenty-five dollars, nor more than one thousand dollars for each offense, to be recovered in an action of debt, in the name of the People of the State of Illinois—the treble damages for the use of the party aggrieved, and the forfeiture for the use of the school fund of the county in which the offense is committed. [As amended by Act approved June 25, 1883. In force July 1, 1883. L. 1883, p. 125.]

NOTE.—See *Atchison T. & St. Fe Ry. Co. v. People* 227 Ill. 270, Revg. 128 Ill. App. 38; etc.

166. Speed Through Cities, Etc.—Damages.

§ 24. Whenever any railroad corporation shall by itself or agents, run any train, locomotive engine, or car, at a greater rate of speed in or through the incorporated limits of any city, town or village, than is permitted by any ordinance of such city, town or village, such corporation shall be liable to the person aggrieved for all damages done the person or property by such train, locomotive engine or car; and the same shall be presumed to have been done by the negligence of said corporation or their agents; and in addition to such penalties as may be provided by such city, town or village, the person aggrieved by the violation of any of the provisions of this section, shall have an action against such corporation, so violating any of the provisions to recover a penalty of not less than one hundred dollars (\$100), nor more than two hundred dollars (\$200), to be recovered in any court of competent jurisdiction; said action to be an action of debt, in the name of the People of the State of Illinois, for the use of the person aggrieved; but the court or jury trying the case may reduce said penalty to any sum, not less, however, than fifty dollars (\$50), where the offense committed by such violation may appear not to be malicious or willful: *Provided*, that no such ordinance shall limit the rate of speed, in case of passenger trains to less than ten miles per hour, nor in any other case to

less than six miles per hour. [As amended by Act approved May 22, 1877. In force July 1, 1877. L. 1877, p. 165.]

NOTE.—See *Chicago, R. I. & Pacific R. Co. v. Reidy* 66 Ill. 43 as to constitutionality; *City of Lake View v. Tate* 33 Ill. App. 78 Affd. 130 Ill. 247 and *Derges v. Chicago, B. & O. R. Co.* 148 Ill. App. 639 as to power of municipalities, etc.

167. Time of Stop at Stations.

§ 25. Every railroad corporation shall cause its passenger trains to stop upon its arrival at each station advertised by such corporation as a place for receiving and discharging passengers, upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: *Provided*, all regular passenger trains shall stop a sufficient length of time at the railroad station of county seats, to receive and let off passengers with safety: *But provided, further*, that where three (3) regular passenger trains each way each day are so stopped at the railroad stations of county seats on any division of any railroad in this State, it shall be lawful for not more than two through express or mail passenger trains carrying mail or express and passengers from one state to another, each way each day, to pass through the railroad stations of county seats on such division in this State without stopping. [As amended by Act approved April 11, 1899. In force July 1, 1889. L. 1889, p. 333; Legal News Ed., p. 244.]

NOTE.—See *Cleveland, C. C. & St. Louis R. Co. v. People* 177 U. S. 523, 44 L. ed. 868 revg. 175 Ill. 359 as to constitutionality also *Illinois Cent. R. Co. v. People* 143 Ill. 434 revd. 163 U. S. 142, 41 L. ed. 107; *Ohio & M. R. Co. v. People* 29 Ill. App. 561 and *Lake Erie & W. R. Co. v. People* 42 Ill. App. 387 as to construction of the statute.

168. Brakeman, Etc., on Passenger Cars.

§ 26. No railroad corporation shall run or permit to be run upon its railroad any train of cars moved by steam power, for the transportation of passengers, unless there is placed upon the train one trusty and skillful brakeman for every two cars in the train, or unless the brakes are efficiently operated by power applied from the locomotive.

169. Brakeman on Freight Cars.

§ 27. No railroad corporation shall run or permit to be run upon its railroad any train of cars, for the transportation of merchandise or other freight, without a good and sufficient brake attached to the rear or hindmost car of the train, and a trusty and skillful brakeman stationed upon said car, unless the brakes are efficiently operated by power applied from the locomotive.

170. Damages—Penalty. •

§ 28. If any railroad corporation shall violate any of the provisions of the three preceding sections, it shall be liable to the person aggrieved for all damages done to person or property by reason thereof, with costs of suit; and in addition thereto, said corporation shall forfeit the sum of not less than \$100 nor more than \$500, for each offense, to be recovered in an action of debt, in the name of the People of the State of Illinois, for the use of any person aggrieved, before any court of competent jurisdiction.

171. Checks or Receipts for Baggage.

§ 29. Every railroad corporation, when requested, shall give checks or receipts to passengers for their ordinary baggage, when delivered for transportation on any passenger train, which baggage shall, in no case, exceed one hundred pounds in weight for each passenger, and shall deliver such baggage to any passenger upon the surrender of such checks or receipts. Any such corporation willfully refusing to comply with the requirements of this section, shall pay a fine of not less than \$10 nor more than \$100, which may be recovered before any court of competent jurisdiction, in an action of debt, in the name of the People of the State of Illinois, for the use of the person aggrieved: *Provided*, that no passenger shall be entitled to receive checks or receipts for any baggage unless he shall have paid or tendered the lawful rate of fare for his transportation to the proper agent for such corporation.

172. Baggage Smashing.

§ 30. Any person employed by a railroad corporation in this State, who shall willfully, carelessly or negligently break, injure or destroy any baggage, shall be liable for the amount of damage to the owner thereof, and may be arrested, and, on conviction before a justice of the peace, be fined in any sum not exceeding \$200, and held in custody or confined in the county jail until such fine shall be paid: *Provided*, that the remedy hereby given against such employee shall not lessen the liability of such corporation. [See "Criminal Code," Ch. 38, § 193.]

173. Order on Trains—Putting Off Passengers.

§ 31. If any passenger on any railroad car or train shall refuse, upon reasonable demand to pay his lawful fare, or shall, upon such car or train, use abusive, threatening, vulgar, obscene or profane language thereon, or shall so conduct himself as to make his presence offensive or unsafe to passengers thereon, it shall be lawful for the conductor of the train to remove, or cause to be removed, such passenger from the train; but if such conductor shall use, or cause or permit to be used, unreasonable force or violence, he shall be liable for all damages to the person injured thereby: *Provided*, that the recovery and satisfaction of damages, under the provisions of this section shall not lessen the liability of or the amount of the damage that such corporation may be liable to for such acts. [As amended by Act approved June 3, 1889. In force July 1, 1889. L. 1889, p. 224.]

NOTE.—See *Illinois Cent. R. Co. v. Latimer* 128 Ill. 163, Affg. 28 Ill. App. 552; *Toledo, P. & W. R. Co. v. Patterson* 63 Ill. 304; etc.

174. Badge.

§ 32. Every conductor, baggage-master, brakeman, or other servant of any railroad corporation in this State, employed on a passenger train, or about the passenger depots, shall wear upon his hat or cap a badge which shall indicate his office. No conductor without such badge shall demand, or be entitled to receive from any passenger, any fare, toll or ticket, or exercise any of the powers of his office; and neither shall any other of said officers or servants, without such badge, be authorized to meddle or interfere with any passenger, his baggage or property.

175. Common Law Liability Not to be Limited.

§ 33. That whenever any property is received by any railroad corporation to be transported from one place to another, within or without this State, it shall not be lawful for such corporation to limit its common law liability safely to deliver such property at the place to which the same is to be transported, by any stipulation or limitation expressed in the receipt given for the safe delivery of such property.

NOTE.—See *Coats v. Chicago, R. I. & P. R. Co.*, 144 Ill. App. 81, Revd. 239 Ill. 154 as to constitutionality; See in general, *Western Transp. Co. v. Newhall* 24 Ill. 466, *Illinois Cent. R. Co. v. Smyser & Co.* 38 Ill. 354, *Chicago & Northwestern Ry. Co. v. Simon* 160 Ill. 648; *Boscowitz v. Adams Express Co.* 93 Ill. 523; etc.

176. To Furnish Ax, Saw, Sledge, Etc., for Each Car.

§ 34. That every railroad corporation shall furnish each car used for the transportation of passengers with one woodman's ax, one hand saw, one sledge hammer and two leather buckets; said articles to be kept in good repair, ready for instant use, and in some convenient place in such car, easy of access in case of collision or other accident.

177. Couplings.

§ 34½. It shall be the duty of all railroad corporations operating any railroad in this State, to provide such of their passenger cars as are used in trains with some suitable automatic coupling, or other coupling which will secure personal safety, within one year from the time this law goes into effect, and any company refusing or neglecting to provide such automatic coupling, or other couplings which will secure personal safety, for

each passenger car so used in trains, shall be liable to a fine of not less than 25 nor more than \$50.

178. Flagmen—Shelter.

§ 35. In all cases where the public authorities having charge of any street over which there shall be a railroad crossing, shall notify any agent of the corporation owning, using or operating such railroad, that a flagman is necessary at such crossing, it shall be the duty of such railroad company within sixty days thereafter, to place and retain a flagman at such crossing, who shall perform the duties usually required of flagmen; and such flagman is hereby empowered to stop any and all persons from crossing a railroad track when, in his opinion, there is danger from approaching trains or locomotive engines; and any railroad company refusing or neglecting to place flagmen, as required by this section, shall be liable to a fine of \$100 per day for every day they shall neglect or refuse to do so; and it is hereby made the duty of such public authorities having charge of such street, to enforce the payment of such fine, by suit, in the name of the town or municipal corporation wherein such crossing shall be situate, before any court of competent jurisdiction in the county, and the prosecuting attorney shall attend to the prosecution of all suits as directed by said public authorities. All the moneys collected under the provisions of this Act shall be paid into the treasury of the town or municipal corporation in whose name such suits shall have been brought: *Provided*, that when any railroad company is required to keep a flagman at a crossing, it shall have the right to erect and maintain in the highway or street crossed a suitable house for the shelter of such flagman, the same to be so located as to create the least obstruction to the use of such street or highway, and afford the best view of the railroad track in each direction from such crossing. [L. 1869, p. 314, § 8.]

NOTE.—The Public Utilities Act transfers jurisdiction over this question from the municipality to the State Commission.

179. Penalties.

§ 36. If any railroad corporation, or any of its agents, servants or employees, shall violate any of the provisions of this Act, such corporation, agent, servant or employee, shall, severally, unless otherwise herein provided, be liable to a fine of not less than \$10 nor more than \$200, to be recovered in an action of debt, in the name of the People of the State of Illinois, for the use of any person aggrieved, before any court of competent jurisdiction.

180. Corporation Defined.

§ 37. The word "corporation," as used in this Act, shall be construed to include all companies, lessees, contractors, persons, or associations of persons, owning, operating or using any railroads in this State.

181. Street Railroads.

§ 38. This Act shall not apply to horse cars or street railroads.

AN ACT relating to fires caused by locomotives. [Approved and in force March 29, 1869. L. 1869, p. 312.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 103, 104.)

182. Fires by Locomotives.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in all actions against any person or incorporated company for the recovery of damages on account of any injury to any property, whether real or personal, occasioned by fire communicated by any locomotive engine while upon or passing along any railroad in this State, the fact that such fire was so communicated shall be taken as full *prima facie* evidence to charge with negligence the corporation, or person or persons who shall, at the time of such injury by fire, be in the use and occupation of such railroad, either as owners, lessees or mortgagees, and also

ose who shall at such time have the care and management of such engine; id it shall not, in any case, be considered as negligence on the part of the vner or occupant of the property injured, that he has used the same in e manner, or permitted the same to be used or remain in the condition it ould have been used or remained had no railroad passed through or near e property so injured, except in cases of injury to personal property which all be at the time upon the property occupied by such railroad. This ct shall not apply to injuries already committed.

3. Act Takes Effect.

§ 2. This Act shall take effect and be in force from and after its issage.

NOTE.—See in general, *Chicago & Alton R. Co. v. Pennell* 110 Ill. 435; *Illinois nt. R. Co. v. Siler* 229 Ill. 390; etc.

N Act to amend an Act entitled "An Act for the protection of passengers on railroads," approved May 14, 1877. In force July 1, 1877. [Approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 223.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 105-107.)

4. Conductors Vested with Police Powers.

SECTION 1. *Be it enacted by the People of the State of Illinois, reprented in the General Assembly:* That an Act entitled "An Act for the rotection of passengers on railroads," approved May 14, 1877, in force uly 1, 1877, be amended so as to read as follows: "An Act for the protec- on of passengers on railroads and steamboats."

§ 2. That the conductors of all railroad trains, and captain or master f any steamboat carrying passengers within the jurisdiction of this State, all be vested with police powers while on duty on their respective trains nd boats, and may wear an appropriate badge indicative of such authority. As amended by Act approved June 9, 1909. In force July 1, 1909. L. 1909, 181.]

5. Ejection of Passenger from Train.

§ 3. When any passenger shall be guilty of disorderly conduct, or use ny obscene language, to the annoyance and vexation of passengers, or lay any games of cards, or other games of chance for money or other aluable thing, upon any railroad train or steamboat, the conductor of such ain and captain or master of such steamboat is hereby authorized to stop ls train or steamboat, at any place where such offense has been committed nd eject such passenger from the train or boat using only such force as ay be necessary to accomplish such removal, and may command the ssistance of the employees of the railroad company or steamboat, or any of e passengers to assist in such removal; but before doing so he shall tender o such passenger such proportion of the fare he has paid as the distance he en is from the place to which he has paid his fare, bears to the whole istance for which he has paid his fare.

6. When Passenger May be Arrested.

§ 4. When any passenger shall be guilty of any crime or misdemeanor pon any train, or steamboat, the conductor, captain or master, or employees f such train, or boat, may arrest such passenger and take him before any stice of the peace, in any county through which such boat or train may ass, or in which its trip may begin or terminate, and file an affidavit before ch justice of the peace, charging him with such crime or misdemeanor.

N Act making it the duty of railroads operating in whole or in part within the State of Illinois to provide first medical aid to injured passengers, employees or other persons, and providing a penalty for violation thereof. (Approved June 24, 1915.)

7. First Aid Equipment Must be Carried.

SECTION 1. *Be it enacted by the People of the State of Illinois, reprented in the General Assembly:* That all railroads or the receiver or

receivers of any railroad operating trains, in whole or in part, within the State of Illinois, shall provide a package containing the articles hereinafter stated, on each train or engine, for first aid to persons who may be injured in the course of the operation of such train or trains.

188. Contents of Package.

§ 2. Every such package shall include the following and such other articles and equipment as may in the judgment and discretion of the management of the railroad or the medical department thereof be useful for the intended purpose:

A standard package to contain two (2) pieces of sterile gauze, one (1) ribbon bandage, one (1) triangular cambric picture bandage in aseptic container, six (6) of these packages to make up one (1) first aid kit.

189. First Aid Instruction.

§ 3. The chief surgeon, one of his assistants or other capable physician shall at reasonable intervals offer first aid instruction to the engine and trainmen in his jurisdiction.

190. Penalties.

§ 4. Any railroad or the receiver or receivers of any railroad who shall fail to comply with the provisions of this Act, shall be liable to a penalty of not less than five (\$5.00) dollars nor more than twenty-five (\$25.00) dollars and each day's violation shall constitute a separate offense, and prosecution for said violations shall be instituted by the State Public Utilities Commission upon complaint of any citizen of the State: *Provided* that the railroad company or receiver or receivers shall be allowed not to exceed three (3) days without penalty to replace any package or packages after the use of same has been reported by the employee in charge of said train or engine.

AN ACT to prohibit any person from obstructing the regular operation and conduct of the business of railroad companies or other corporations, firms or individuals. [Approved June 2, 1877. In force July 1, 1877. L. 1877, p. 167.] (Hurd's Revised Statutes 1917, Ch. 114, Secs. 108-111.)

191. Engineer Not to Abandon Engine.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* If any locomotive engineer in furtherance of any combination or agreement, shall willfully and maliciously abandon his locomotive upon any railroad at any other point than the regular schedule destination of such locomotive, he shall be fined not less than twenty dollars, nor more than one hundred dollars, and confined in the county jail, not less than twenty days, nor more than ninety days.

192. Persons Obstructing Business of Railroad—Fine.

§ 2. If any person or persons shall willfully and maliciously, by any act or by means of intimidation, impede or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company or other corporation firm or individual in this State, or of the regular running of any locomotive engine freight or passenger train of any such company, or the labor and business of any such corporation, firm or individual he or they shall, on conviction thereof, be punished by a fine not less than twenty dollars (\$20), nor more than two hundred dollars (\$200), and confined in the county jail not less than twenty nor more than ninety days.

193. Conspiracy to Impede Business.

§ 3. If two or more persons shall wilfully and maliciously combine or conspire together to obstruct or impede by any act, or by means of intimidation, the regular operation and conduct of the business of any railroad company or any other corporation, firm or individual in this State, or to impede hinder or obstruct, except by due process of law, the regular running of any locomotive engine freight or passenger train on any railroad, or the labor

or business of any such corporation, firm, or individual, such persons shall, on conviction thereof, be punished by fine not less than twenty dollars (\$20), nor more than two hundred dollars (\$200), and confined in the county jail not less than twenty days, nor more than ninety days.

194. Construction of Act.

§ 4. This Act shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company or such other corporation, firm or individual, whether by concert of action or otherwise, except as is provided in section one (1) of this Act.

AN ACT to prevent frauds upon travelers and owners of any railroad, steamboat or other conveyance for the transportation of passengers. [Approved April 19, 1875. In force July 1, 1875. L. 1875, p. 81.] Hurd's Revised Statutes 1917 Ch. 114, Secs. 112-117.)

195. Owner to Furnish Agent Certificate of Authority to Sell Tickets.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That it shall be the duty of owner or owners of any railroad or steamboat for the transportation of passengers, to provide each agent, who may be authorized to sell tickets, or other certificates entitling the holder to travel upon any railroad or steamboat, with a certificate setting forth the authority of such agent to make such sales; which certificate shall be duly attested by the corporate seal of the owner of such railroad or steamboat.

196. Not Lawful for Person Without Authority to Sell Tickets.

§ 2. That it shall not be lawful for any person not possessed of such authority, so evidenced, to sell, barter, or transfer, for any consideration whatever, the whole or any part of any ticket or tickets, passes, or other evidences of the holder's title to travel on any railroad or steamboat, whether the same be situated, operated or owned within or without the limits of this State.

197. Penalty.

§ 3. That any person or persons violating the provisions of the second section of this Act shall be deemed guilty of misdemeanor, and shall be liable to be punished by a fine not exceeding five hundred dollars, and by imprisonment not exceeding one year, or either, or both, in the discretion of the court in which such person or persons shall be convicted.

198. Agent to Exhibit Certificate on Request.

§ 4. That it shall be the duty of every agent who shall be authorized to sell tickets, or parts of tickets, or other evidences of the holder's title to travel, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him, the certificate of his authority thus to sell, and to keep said certificate posted in a conspicuous place in his office for the information of travelers.

199. Duty of Owner to Provide for Redemption of Tickets.

§ 5. That it shall be the duty of the owner or owners of railroad or steamboat, by their agents or managers, to provide for the redemption of the whole, or any parts or coupons of any ticket or tickets, as they may have sold, as the purchaser, for any reason, has not used, and does not desire to use, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the proportion of said ticket was actually used; and the sale by any person of the annual portion of any ticket otherwise than by the presentation of the same for redemption, as provided for in this section, shall be deemed to be a violation of the provisions of this Act, and shall be punished as is hereinbefore provided: *Provided* that this Act shall not prohibit any person who has purchased a ticket from any agent authorized by this Act, with the

bona fide intention of traveling upon the same, from selling any part of the same to any other person.

200. Penalty for Failure to Redeem Tickets.

§ 6. Any railroad or steamboat company that shall, by any of its agents in this State, refuse to redeem any of its tickets or parts of tickets as prescribed in section five of this Act, shall pay a fine of five hundred dollars for each offense, to the People of the State of Illinois, and it shall be unlawful for said company, subsequent to such refusal, to sell any ticket or tickets in this State until such fine is paid.

NOTE.—As to constitutionality of the Act see *Burdick v. People* 149 Ill. 600; In general see *Chicago & Alton R. Co. v. Mulford* 59 Ill. App. 479, Revd. 162 Ill. 522; *City of Chicago v. Openheim* 229 Ill. 313; etc.

VII. RAILROAD CROSSINGS.

AN ACT in relation to the crossing of one railway by another, and to prevent danger to life and property from grade crossings. [Approved May 27, 1889. In force July 1, 1889. L. 1889, p. 223.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 209, 210.)

NOTE.—The two sections of the statute immediately following are expressly saved from repeal by virtue of section 58 of the Public Utilities Commission Law. Ante, 58.

201. Crossing of One Railroad by Another.

SECTION 1. That hereafter any railroad company desiring to cross with its track or tracks the main track of another railroad company, shall, before constructing any such crossing, apply to the Railroad and Warehouse Commission for permission to make such crossing, and it shall thereupon be the duty of such Commission to view the ground, and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said Commission shall give a decision prescribing the place where and the manner in which said crossing shall be made, but in all cases the compensation to be paid for property actually required for the crossing and all damages resulting therefrom, shall be determined in the manner provided by law in case the parties fail to agree: *Provided*, that said Commission shall only grant permission to construct such crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railroad to be crossed. [As amended by Act approved May 25, 1907. In force July 1, 1907. L. 1907, p. 475.]

NOTE.—As to constitutionality see *Chicago & S. Traction Co. v. Illinois Cent. R. Co.* 246 Ill. 146; *Malott v. Collinsville, C. & E. St. L. Elec. R. Co.* 47 C. C. A. 345; etc.

202. Expense of Construction of Crossing.

§ 2. The railroad company seeking the crossing, shall, in all cases, pay the costs and expenses of the Commission incurred in the investigation and if permission for a grade crossing is given, shall bear the entire expense of the construction thereof, together with the cost of installing such interlocking or other safety appliance as shall be required and the cost of the maintenance thereof. If a separation of grades be required at such crossing, then such Commission shall decide and include in the order authorizing such crossing the proportion of the expense thereof to be paid by the railroads interested in said crossings, respectively, but not more than one-third of such expense shall be charged against the senior road. Interurban electric railroads and street railroads are hereby declared to be railroads and within the meaning of this Act. [As amended by Act approved May 25, 1907. In force July 1, 1907; L. 1907, p. 475.]

AN ACT to protect persons and property from danger at the crossings and junctions of railroads by providing a method to compel the protection of the same. [Approved June 2, 1891. In force July 1, 1891. L. 1891, p. 181.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 211-217.)

203. Protecting Crossings—Interlocking or Other Safety Devices.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in every case where the main tracks of two or more railroads cross at a grade in this State, any company owning or operating any one of such tracks, whose managers may desire to unite with others by protecting such crossings with interlocking or other safety devices, may file with the Railroad and Warehouse Commission a petition stating the facts of the situation, and asking said Railroad and Warehouse Commission to order such crossing to be protected by interlocking signals, devices and switches, or other safety appliances. Said petition shall be accompanied by a plat showing the location of all tracks; and upon the filing thereof, notice shall be given to each other company or person owning or operating any track involved in such crossing, and the said Railroad and Warehouse Commission shall thereupon view the site of such crossing, and shall as soon as practicable, appoint a time and place for the hearing of such petition.

NOTE.—Although section 58 (*ante*, 58) of the Public Utilities Commission Law gives the Commission power to determine the manner and terms of installation, operation maintenance, use and protection of a grade crossing, it does not seem to be inconsistent with the following seven sections of the law of 1891 in relation to the protection of persons and property at crossings. These seven sections should therefore be construed with section 58 of the Public Utilities Commission Law, and, since the jurisdiction of the Board of Railroad and Warehouse Commissioners, so far as it does not conflict with the Public Utilities Commission Law, is transferred to the Commission (Public Utilities Commission Law, sec. 81), *ante*, 81, the Commission is entitled to exercise the rights and privileges conferred by the Act of 1891 as also the rights and privileges conferred by section 58 of the Public Utilities Commission Law. Wherever the words "Railroad and Warehouse Commission" occur in the seven sections of this statute, read "State Public Utilities Commission."

204. When Grade Crossing Dangerous—Power of Commission—Petition.

§ 2. If the said Railroad and Warehouse Commission shall, from information obtained in any manner, have cause to believe that any such grade crossing, as described in section one of this Act, is dangerous to the public or to persons operating trains, and requires protection, then it shall be the duty of the said Commission, without any petition, and of its own motion, to cite the several companies or persons owning or operating the railway tracks froming such crossing, to come before said Commission at such time and place as may be named, and show cause why they should not be required to provide such crossing with interlocking or other safety appliances.

NOTE.—See *Wabash Ry. Co. v. Village of Tilton*, IV I. P. U. C. 143.

205. Commission to Hear Petition—Interlocking Signals—Cost.

§ 3. At the time and place named for hearing under any petition filed in pursuance of section one of this Act, or in any citation issued in pursuance of section two thereof, unless the hearing is for good cause continued, said Railroad and Warehouse Commission shall proceed to try the question whether or not the crossing shall be protected by interlocking or otherwise, and shall give to all companies and parties interested an opportunity to be fully heard and said Commission shall after such hearing, enter an order upon the record book or docket to be kept for the purpose, denying the petition or discharging the citation if the protection of such crossing as proposed is deemed unnecessary or if said Commission shall be of opinion, from the evidence and facts produced, that the public good requires that such crossing be protected, then the Commission shall enter an order prescribing an interlocking device or equipment for such crossing, in case the companies interested can not agree upon a device, in which order shall be specified the kind of machine to be used, the switches, signals and other devices or appliances to be put in, and the location thereof,

and all other matters which may be deemed proper for the efficient protection of such crossing and said Commission shall further designate in such order, the proportion of the cost of the construction of such plant, and of the expense of maintaining and operating the same, which each of the companies or persons concerned shall pay. [As amended by Act approved May 25, 1907. In force July 1, 1907; L. 1907, p. 474.]

NOTE.—See *State Public Utilities Comm. ex rel. Wabash R. Co. v. Illinois Central R. Co.* 274 Ill. 36.

206. Commission to Inspect Plant—May Issue Permit to Run Crossing Without Stopping.

§ 4. It shall be the duty of every railroad company or person owning or operating any track involved in any such crossing to comply with and carry out fully, or unite with the others in doing so, any order of the said Railroad and Warehouse Commission made in pursuance of any proceeding instituted or had under this Act, such work to be completed within ninety days after such order is made unless the Railroad and Warehouse Commission shall for good cause shown extend the time; and when any such plant shall have been completed and made ready for use, it shall be the duty of the companies or persons concerned to notify the said Railroad and Warehouse Commission thereof, whereupon said Commission shall inspect or cause to be inspected the said completed plant in the same manner as is now provided, in the Act upon that subject, approved June 3, 1887; and if, upon such inspection, the said plant is deemed to be well constructed and suitable and sufficient for the purpose, the said Railroad and Warehouse Commission shall issue a permit empowering the several companies or persons owning or operating the tracks involved therein to run such crossing without stopping under such rules and regulations as may be in force, or may thereafter be adopted, by the said Commission, any law now in force upon the subject of stopping trains at railway crossings to the contrary notwithstanding.

207. Penalty for Not Complying With Order.

§ 5. Any company, person or corporation refusing or neglecting to comply with any order made by the said Railroad and Warehouse Commission in pursuance of this Act shall forfeit and pay a penalty of \$200 for each week of such refusal and neglect, the same to be recovered in an action of debt in the name of the People of the State of Illinois, and to be paid, when collected, into the county treasury of any county where any such suit may be tried.

208. Expenses—How Paid.

§ 6. All expenses incurred in any proceeding under this Act shall be paid by the railway companies concerned, in equal portions, upon bills to be rendered by the secretary of said Commission.

209. What a Crossing Within Meaning of Act.

§ 7. Every junction of two or more railroad tracks, whether the tracks joining each other are owned by different companies or by the same company, shall be taken and deemed to be a crossing within the meaning of this Act: *Provided*, that this section shall not apply to switch, spur or side tracks.

NOTE.—The following Act is repealed by implication: "An Act concerning the rights, powers and duties of certain corporations therein mentioned, authorizing the sale and transfer of any railroad, or railroad and toll bridge, and other property, franchises, immunities, rights, powers and privileges connected therewith or in respect thereto, of any corporation of this State, to a corporation of another state, and prescribing the rights, powers, duties and obligations of the purchasing company," approved April 21, 1899; in force July 1, 1899. (Hurd's Revised Statutes, 1917, Ch. 114, Sec. 218.) This Act is annulled by virtue of section 27 of the Public Utilities Commission Law, *Ante*, 27. See *People v. A. T. & S. F. Ry. Co.*, 206 Ill. 252; *Illinois Trust Co. v. St. L. I. M. & S. Ry. Co.*, 208 Ill. 119.

AN ACT to amend an Act entitled, "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as subsequently amended, by adding thereto three new sections to be known as section 75a, section 145a and section 145b.

210. Relocation of Crossing—Duty of Highway Commissioners.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That an Act entitled, "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as subsequently amended by adding thereto three new sections to be known as section 75a, section 145a and section 145b, to read as inserted at length herein.

§ 75a. Whenever the State Public Utilities Commission, or its successor, shall find and certify to the highway commissioners of any town or road district, that the reconstruction, alteration, relocation improvement or abolishment of any crossing of the track of any railroad company across any highway or public road, is necessary to preserve or promote the safety of the public or of the employees or passengers of such railroad, and that for that purpose it is necessary to relocate, divert or establish any highway or public road, it shall be the duty of such highway commissioners to relocate, divert or establish such highway or public road in accordance with such findings. The proceedings for that purpose shall be in accordance with the provisions of subdivision VI of this Act, except that the petition mentioned in section 75 shall not be necessary, but the findings and certificate of said Commission shall stand in lieu of such petition.

Any official who shall fail or neglect to perform any duty created by this section shall be liable to a fine of not less than ten (\$10) dollars nor more than one hundred (\$100) dollars for each such offense.

211. Duty of Person Operating Vehicle at Grade Crossing.

§ 145b. Upon approaching any highway crossing a railroad at grade, the person controlling the movement of any self-propelled vehicle shall reduce the speed of such vehicle to a rate of speed not [to] exceed ten (10) miles per hour. At grade crossings at which "Stop" signs are placed, the person controlling the movement of any self-propelled vehicle shall bring such vehicle to a full stop at such "Stop" sign before proceeding over the railroad tracks. Failure to bring such vehicle to a full stop at such crossing before passing over the tracks of the railroad, as herein provided, shall be deemed a misdemeanor and the person guilty of such misdemeanor shall be subject to a fine not to exceed ten dollars (\$10); the proceeds of fines so collected to be paid into the county treasury and used to maintain the highways of such county.

212. Duty of Highway Commissioners to Remove Obstructions to View.

§ 145a. At all grade crossings of public highways over railroads outside the corporate limits of any city or village, the highway commissioners shall remove, or cause to be removed from the highways all removable obstructions to the view of such grade crossings, such as brush and shrubbery, and trim, or cause to be trimmed, all hedges and trees upon the highway for a distance of not less than three hundred (300) feet from each side of such crossings.

It shall be the duty of the highway commissioners to erect and maintain such signs as the Public Utilities Commission may prescribe alongside the roadway on the highway at a distance of three hundred (300) feet on either side from every grade crossing located in the various townships or road districts of the State, designated as "extra hazardous" by the Public Utilities Commission. Such signs shall be erected upon a substantial post or pedestal at a height of approximately five (5) feet above the level of the highway at the point where such sign is located. No advertising or other signs shall be placed upon the highway or upon the railroad right-of-way within fifty (50) feet of any signs required by law to be placed at or near grade crossings.

It shall be unlawful for any person, firm or corporation to place, or to cause to be placed, any sign at a public highway within a distance of three hundred (300) feet of any grade crossing, except signs or signals required by law or the Public Utilities Commission for the protection of such crossings.

Any person who unlawfully removes, throws down, injures or defaces any sign required by law to be maintained at or near any railroad crossings on the public highway, shall be liable to a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100) for each offense.

If, in the case of any such crossing it appears that the presence of such signs is unnecessary, the Public Utilities Commission, on petition of the highway commissioners of the township or road district in which such crossing is situated, may release such township or road district of the obligation of placing or maintaining such signs on the highway near such crossing.

It shall be the duty of the highway commissioners to maintain any and all signs placed or erected on any such highway by or through the order of the Public Utilities Commission of this State.

With respect to State aid roads, the duties hereby imposed on the highway commissioners shall be performed by the authorities in charge of such State aid roads.

VIII. INSPECTION OF EQUIPMENT AND OPERATION OF SAFETY APPLIANCES.

AN ACT entitled "An Act providing for the inspection of equipment and operation of safety appliances on railroads engaged in moving traffic between points in the State of Illinois." [Approved May 12, 1905. In force July 1, 1905. L. 1905, p. 349.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 219-222.)

213. Inspectors of Automatic Couplers—Appointment—Term—Who Eligible.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That three inspectors of automatic couplers, power brakes and grab irons or hand holds on railroad locomotives, tenders, cars and similar vehicles shall be appointed by the Railroad and Warehouse Commissioners, within thirty days after this goes into effect, who shall hold office two years, unless sooner removed for cause, and until their successors are appointed and qualified. At any time a vacancy occurs in this office, the Railroad and Warehouse Commissioners shall immediately fill the vacancy by appointment.

No person is eligible to hold this office who is an officer or an employee of a railroad company, or owns or is interested, directly or indirectly, in the stocks or bonds of any railroad company or who has not had at least seven years of practical experience on some line of railroad operated in the State of Illinois in one or more of the following capacities: Engineer, fireman, conductor, yardmaster, brakeman, train baggageman, switchman, car inspectors or car repairers. [As amended by Act approved June 26, 1913. In force July 1, 1913. L. 1913, p. 508.]

NOTE.—As the jurisdiction of the Board of Railroad and Warehouse Commissioners, in so far as consistent with the Public Utilities Commission Law, is transferred to the Commission (Public Utilities Commission Law, Sec. 81), *ante*, 81, the words "Railroad and Warehouse Commissioners," wherever they appear in the four sections of this statute should be read: "State Public Utilities Commission."

214. Bond—Oath of Office.

§ 2. Before entering on his duties the said inspector shall give bond to the State of Illinois in the sum of three thousand dollars, with two or more sureties, or a bond and surety company, acceptable to the Railroad and Warehouse Commissioners, conditioned for the faithful performance of his duties, and shall also take the usual oath of office, which oath and bond, with the approval of the Railroad and Warehouse Commissioners endorsed thereon, shall be deposited with the Secretary of State.

215. Right of Passing Over Railroads in Performance of Duties—Salary—Expenses—Office.

§ 3. Said inspectors shall have the right of passing in the performance of their respective duties over all railroads and upon all railroad trains in this State, and over, upon or in all instrumentalities used by any common carrier in the transportation of persons or property between points wholly within the State of Illinois. Each inspector shall be paid a salary of fifteen hundred dollars (\$1,500) per year and necessary expenses, which shall be paid in the manner now provided by law for the salaries and expenses of the Railroad and Warehouse Commissioners. Said inspectors shall have their offices in the State House, in the office of the Railroad and Warehouse Commissioners, and shall be under the supervision of said commissioners. [As amended by Act approved June 26, 1913. In force July 1, 1913. L. 1913, p. 508.]

216. Duties of Inspectors—Reports.

§ 4. It shall be the duty of the said inspectors to inspect the surface and track conditions of train yards, sanitary condition of cars used in transporting persons between points in Illinois, and investigate train accidents resulting in injury to persons or property. Said inspectors shall inspect the couplers, power brakes and grab irons or hand holds and other portions of cars and engines used by persons on the railroads engaged in moving traffic between points in Illinois and shall make weekly reports of his inspections, reporting all conditions to the Railroad and Warehouse Commission. [As amended by Act approved June 26, 1913. In force July 1, 1913. L. 1913, p. 508.]

NOTE.—See *Luken v. Lake Shore & M. S. R. Co.* 248 Ill. 377, Affg. 154 Ill. App. 550.

IX. PROMOTING SAFETY OF EMPLOYEES AND TRAVELERS BY COMPELLING COMMON CARRIERS TO EQUIP CARS WITH AUTOMATIC COUPLERS, ETC.

AN ACT to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in moving traffic by railroad between points in the State of Illinois to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes, and for other purposes. [Approved May 12, 1905. In force July 1, 1905. L. 1905, p. 350. Legal News Ed., p. 275.] (Hurd's Revised Statutes 1917, Ch. 114, Secs. 223-232.)

217. Equipment as to Brakes.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That from and after the passage of this Act it shall be unlawful for any common carrier engaged in moving traffic by railroad between points in this State to use on its line any locomotive in moving such traffic, not equipped with a power driving wheel brake and appliances for operating the train brake system, or to run any train in such traffic after the passage of this Act that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakeman to use the common hand brake for that purpose.

NOTE.—This Act should be construed in connection with section 49 of the Public Utilities Commission Law, with reference to facilities and equipment. And as the jurisdiction of the Board of Railroad and Warehouse Commissioners, so far as consistent with the Public Utilities Commission Law, is transferred to the Commission (Public Utilities Commission Law, Sec. 81), *ante*, 81, the words "Railroad and Warehouse Commission," wherever they appear in ten sections of the statute, should be read "State Public Utilities Commission."

See *Luken v. Lake Shore & M. S. R. Co.* 248 Ill. 377, Affg. 154 Ill. App. 550.

218. Equipment as to Couplers.

§ 2. That from and after the passage of this Act shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any locomotive, tender, car or similar vehicle used in moving State traffic

not equipped with couplers, coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

NOTE.—See *Erlinger v. St. Louis O'Fallon R. Co.* 152 Ill. App. 640.

219. May Refuse to Receive Cars Not Properly Equipped from Connecting Lines.

§ 3. That when any person, firm, company or corporation engaged in moving traffic by railroad between points in the State of Illinois shall have equipped a sufficient number of its cars so as to comply with the provisions of section 1 of this Act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently in accordance with the first section of this Act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this Act.

220. Must be Equipped with Secure Grab Irons.

§ 4. That from and after the passage of this Act it shall be unlawful for any railroad company to use any locomotive, tender, car, or similar vehicle, in connection with the movement of traffic between points in this State that is not provided with secure grab irons or hand-holds in the ends and sides of each locomotive, tender, car, or similar vehicle for greater security to men in coupling and uncoupling cars.

221. Standard Height of Drawbars.

§ 5. That the standard height of draw bars, measured perpendicularly from the level of the tops of the rails to the center of the draw bars upon standard gauge roads shall be thirty-four and one-half inches; narrow gauge roads twenty six inches, and that the maximum variation from such standard height to be allowed between drawbars of empty and loaded cars shall be three inches.

222. Penalties.

§ 6. That any such common carrier using any locomotive, or tender running any train, or hauling or permitting to be hauled or used on its lines any car, or similar vehicle, in violation of any of the provisions of this Act shall be liable to a penalty of one hundred dollars for each and every such violation to be recovered in a suit or suits to be brought by the State's attorney in the Circuit Court of the county having jurisdiction in the locality where such violation shall have occurred; and it shall be the duty of such State's attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall be the duty of the State Public Utilities Commission of Illinois to lodge with the proper State's attorneys information of any such violations as may come to its knowledge; *Provided*, that nothing in this Act contained shall apply to trains composed of four wheel cars or to trains composed of eight wheel standard logging cars, where the height of such car from the tops of the rails to the center of the couplings does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs, or street cars, or to trains, locomotives, tenders, cars and similar vehicles used in interstate commerce; *And provided* that nothing in this Act contained, except as to the requirements of section 2 of this Act shall apply to locomotives operated on any narrow gauge surface railway which does not interchange cars with any connecting railway, or to four wheel cars having a capacity of not to exceed eight tons, or trains composed of such cars, operated on such narrow gauge railway.

And provided further that nothing in this Act contained shall in any manner affect the power, authority and jurisdiction of the State Public Utilities Commission of Illinois to make and enforce any orders, rules or regulations it may now or at any time be authorized by law to make or enforce with regard to the health and safety of the employees, passengers

and customers of such railway or the public. (As amended by Act of June 29, 1917.)

223. Application of Provisions.

§ 7. The provisions and requirements of this Act shall be held to apply to common carriers engaged in moving traffic by railroad between points in this State and shall apply in all cases, whether or not the couplers brought together are of the same kind, make or type, and the provisions and requirements hereof relating to power driving wheel brakes, train brakes, automatic couplers, grab irons and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars and similar vehicles used on any railroad engaged in moving traffic between points in the State of Illinois, excepting those trains, cars and locomotives exempted by the provisions of section 6 of this Act, and all those trains, locomotives, tenders, cars and similar vehicles used in interstate commerce.

224. Percentage of Cars in Train Required to be Operated with Power Brakes.

§ 8. That whenever, as provided by this Act, any train is operated with power or train brakes not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of this Act, the Railroad and Warehouse Commission may, from time to time, after a full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes, which may have their brakes used and operated as aforesaid; and failure to comply with any such requirement of said Railroad and Warehouse Commission shall be subject to the like penalty as failure to comply with any requirements of this section.

225. Injury to Employee Where Train Not Properly Equipped.

§ 9. That any employee of any such common carrier who may be injured by any train, locomotive, tender, car or similar vehicle in use contrary to the provisions of this Act, shall not be deemed to have assumed the risks hereby occasioned, nor to have been guilty of contributory negligence, because of continuing in the employment of such common carrier or in the performance of his duties as such employee after the unlawful use of such train, locomotive, tender, car, or similar vehicle, had been brought to his knowledge.

226. Extension of Time to Narrow Gauge Railroads.

§ 10. The Railroad and Warehouse Commission is hereby empowered to grant a narrow gauge railroads, upon a full hearing and for good cause, a reasonable extension of time in which to comply with the provisions of this Act: *Provided*, however that such extension or extensions shall not exceed in the aggregate the period of one year from and after its passage.

NOTE.—An enactment of the General Assembly entitled, "An Act requiring common carriers of freight to provide and maintain sidetracks and connections for shippers and receivers of freight," approved June 14, 1909, in force July 1, 1909 (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 301-302), is superseded by section 45 of the Public Utilities Commission Law. *Ante*, 45.

X. REGULATING SIZE OF CABOOSE CARS.

AN ACT to regulate the size and manner of construction of all caboose cars used by any person, receiver or corporation operating a line of railroad situated wholly or in part within the State and providing a penalty in the event of failure. [Approved June 15, 1909. In force July 1, 1909. L. 1909, p. 306.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 303-306.)

227. Construction and Equipment of Caboose Cars.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That it shall be unlawful for any person,

receiver or corporation, operating a line of railroad situated in whole or in part in the State of Illinois, to require or to permit the use of any caboose cars unless said caboose cars shall be at least twenty-four feet in length, exclusive of platforms, and shall be provided with a door in each end thereof, and with cupolas, and with platforms, not less than thirty inches wide across each end thereof, and that said platforms shall be equipped with guard rails, grab irons and steps for the safety of persons in alighting or getting on said caboose cars, and said caboose cars shall be equipped with at least two four-wheel trucks.

NOTE.—As the jurisdiction of the Board of Railroad and Warehouse Commissioners, in so far as it does not conflict with the Public Utilities Commission Law, is transferred to the State Public Utilities Commission (Public Utilities Commission Law, sec. 81, *ante*, 81), the words "Board of Railroad and Warehouse Commissioners" or "Railroad and Warehouse Commission," wherever they appear in the four sections of this statute, should be read "State Public Utilities Commission."

228. Penalty.

§ 2. Any person, receiver or corporation, operating a line of railroad situated in whole or in part in this State, violating any of the provisions of section 1 of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.

229. Board to Enforce Law.

§ 3. It shall be the duty of the Board of Railroad and Warehouse Commissioners to have this law enforced.

230. Application of Act.

§ 4. The provisions of this Act shall not apply to the use of caboose cars in yard and in transfer service, nor to the use of caboose cars now owned by any railroad or railway company operating in this State; and it is further provided that in case of unusual and unforeseen demands of traffic, caboose cars not of standard construction may be used temporarily, provided that the railway company or companies desiring to use the same shall apply to and obtain an order of the Railroad and Warehouse Commission granting the privilege to temporarily use the same.

XI. HEADLIGHTS ON LOCOMOTIVE ENGINES.

AN ACT in relation to the equipment of locomotive engines with headlights and providing penalty for violation of same. [Approved June 26, 1913. In force July 1, 1913.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 307, 308.)

231. Headlights on Locomotive Engines.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all common carriers by railroad, operating or doing business in this State, shall be required to equip and maintain and use on all locomotive engines used by them in passenger service (except suburban passenger service) a headlight of sufficient candle power, measured with the aid of a reflector, to throw a light in clear weather that will enable the operator of same to plainly discern an object the size of a man, upon the track, at a distance of eight hundred feet from the headlight; and upon all locomotive engines used by them in freight service, exclusive of engines in switching, and transfer service, with a headlight of sufficient candle power measured with the aid of a reflector, to throw a light in clear weather that will enable the operator of same to plainly discern an object the size of a man upon the track, at a distance of four hundred and fifty feet from the headlight; and upon all engines used by them in switching, transfer and suburban passenger service, with a headlight of sufficient candle power, measured with the aid of a reflector, to throw a light, in clear weather, that will enable the operator to plainly discern an object the size of a man upon the track, at a distance of two hundred and fifty feet from the headlight: *Provided*, this Act shall not

apply to any locomotive engines running between sunup and sundown, or to any locomotive engine the equipment of which has failed during the trip, providing it is shown that the equipment was in efficient and effective working condition when the trip was begun.

232. Penalty.

§ 2. That any common carrier by railroad violating any of the provisions of this Act shall be guilty of a misdemeanor and shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.

NOTE.—See *Condon v. Vandalia R. Co.*, III I. P. U. C. 39, P. U. R. 1916-F 160.

XII. MAXIMUM RATE OF CHARGES.

AN ACT to establish and regulate the maximum rate of charges for the transportation of passengers by corporations or companies operating or controlling railroads in part or in whole in this State, and to provide penalties for the violation of the provisions thereof, and repealing all Acts and parts of Acts in conflict herewith. [Approved May 27, 1907. In force July 1, 1907; L. 1907, p. 476.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 233-236.)

233. Maximum Rate per Mile.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* that it shall hereafter be unlawful for any corporation or company engaged in the carriage of passengers upon any railroad between points in this State, to charge in excess of two (2) cents per mile for the carriage of adult passengers where any passenger has purchased a ticket entitling him to carriage, or in excess of one (1) cent per mile for the carriage of a passenger under twelve (12) years of age where such passenger has purchased a ticket entitling him to carriage: *Provided*, that the charge in no case shall be less than five cents (5c), and in determining the charge fractions of less than one-half ($\frac{1}{2}$) mile shall be disregarded and all other fractions counted as one (1) mile. If any adult passenger shall have failed to purchase a ticket entitling him to carriage a rate of three (3) cents per mile may be charged and collected; and if any passenger under twelve (12) years of age shall have failed to purchase a ticket entitling him to carriage a rate of one and one-half ($1\frac{1}{2}$) cents per mile may be charged and collected. [As amended by Act approved June 27, 1913. In force July 1, 1913. L. 1913, p. 508.]

NOTE.—See *Re Southern Illinois Light & Power Co.*, VI I. P. U. C. 6; *Re Alton, Granite & St. Louis Trac. Co.*, VI I. P. U. C. 109; *Re Aurora, Elgin & Chicago Ry. Co.*, V I. P. U. C. 1157; etc.

234. Penalty.

§ 2. For any violation of the provisions of this Act by any such corporation or company, its agent or employee, such corporation or company shall forfeit and pay to the State of Illinois, a penalty of not less than twenty-five (25), nor more than one hundred (100) dollars for every such violation, to be recovered by suit brought in the name of the State of Illinois by the Attorney General of the State in any court of competent jurisdiction in any county into or through which said corporation or company runs or passes, or by the State's Attorney of any county through which said corporation or company runs or passes. Where such penalty is recovered in a suit brought by a State's Attorney as provided by this Act, there shall be recovered in addition thereto the sum of ten (10) dollars as compensation for said prosecuting attorney.

235. Invalidity of Section.

§ 3. The invalidity of any section of this Act shall not invalidate any other section thereof.

236. Repeal.

§ 4. All laws in conflict herewith are hereby repealed.

XIII. REDEMPTION OF DRAWBACK CHECKS.

AN ACT to regulate and enforce the redemption of drawback checks issued by railroad corporations. [Approved June 1, 1889. In force July 1, 1889. L. 1889, p. 225; Legal News Ed., p. 139.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 202, 203.)

237. Drawback Check—Redemption of.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That where any railroad corporation issues or causes to be issued or delivered, by a conductor or other authorized agent, what is known as a drawback check to any passenger on account of the over-payment of cash fare by such passenger for transportation over any part of such railroad, such drawback check shall be redeemed by said corporation upon its presentation by the holder at any ticket office of such corporation, within ten years after such drawback check may have been issued; and upon refusal of the agents of such corporation in charge of such ticket office to redeem the same upon such presentation, the holder of such drawback check may maintain an action against such corporation in any court of competent jurisdiction for the recovery of the amount of money stipulated in such drawback check, together with costs of suit and a reasonable attorney's fee, to be fixed by the court where the cause is heard, on appeal or otherwise, and taxed as a part of the costs of suit.

238. Term "Railroad Corporation" Defined.

§ 2. The term railroad corporation contained in this Act shall be deemed and taken to include all companies, lessees, contractors, persons or association of persons, whether incorporated or otherwise owning, operating or using any railroads in this State.

NOTE.—See *Illinois Cent. R. Co. v. People* 95 Ill. 313, Affd. 108 U. S. 541, 27 L. Ed. 818; *Chicago. B. & O. R. Co. v. Jones* 149 Ill. 361 writ of error dismissed 41 L. Ed. 1184; *Snell v. Clinton Elec. L. H. & P. Co.* 196 Ill. 626, Rev. 95 Ill. App. 552; See also *Ruggles v. People* 91 Ill. 256, Affd. 108 U. S. 526; etc.

XIV. RE-LOCATION OF RAILROAD TO RUN THROUGH COUNTY SEAT.

AN ACT to enable any railroad company whose main line runs near to any county seat to change and re-locate such line so as to run through such county seat. [Approved May 5, 1891. In force July 1, 1891. L. 1891, p. 183.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 205-208.)

239. Re-Location of Railroad—County Seat.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That each and every railroad corporation organized in this State, or doing business therein, which has a branch of its railway running through any county seat, and is compelled by law to run all trains passing over the line used by it as its main line upon and over said branch to such county seat, be and it is hereby authorized to re-locate and change the line used by it as its main line of railway and bring it into or through such county seat, so that all trains running over said main line shall pass into or through such county seat on said main line and stop thereat to receive and let off passengers and to put on and take off freight.

NOTE.—It is the general rule that where the charter of a railroad corporation prescribes the termini and general route of the road, leaving the details to be provided for by the corporation at its discretion, the power to determine the location of the line will be at an end as soon as this discretionary power has been exercised. The road cannot be re-located without statutory authority and it follows that, having no right to re-locate without such authority, there is no power to condemn a right of way for such proposed new route. See *Cairo, Vincennes & Chicago Railway Company v. Woodyard*, 226 Ill., 331, 335.

240. Re-Location—Running Trains—Main Line Depot.

§ 2. Whenever any railroad corporation shall have re-located and changed the line used by it as its main line of railway, as provided in section

1 of this Act, and shall run all trains over said main line when re-located into or through such county seat, it shall not be required, notwithstanding the decision of any court of this State heretofore rendered, to run any train or trains passing over the line used by it as its main line upon or over any part of said branch into said county seat: *Provided, however,* It shall be the duty of any such railroad corporation desiring to avail itself of the provisions of this Act to so re-locate its main line of railroad as to bring the same as near to the business center of such county seat as such branch of its railroad is now located, and such railroad corporation upon its main line so re-located shall build, erect and maintain a good and sufficient depot as near to the business center of such county seat as the depot which may now be located on such branch of its railway, and at such depot on said re-located main line of railroad all trains shall stop to receive and let off passengers and to put on and take off freight.

And any railroad company accepting the provisions of this Act shall abandon its right of way and remove its tracks over that portion of its main line between the point where said re-located line leaves the main line as now located and the point where said main line as now located intersects its said branch line as now located, and any railroad company accepting the provisions of this Act shall file in the office of the recorder of the county where such change is made, a map showing in detail the portion of the lines and tracks abandoned and of the new line as re-located, and such recorder shall record such map.

NOTE.—See section 50 of the Public Utilities Commission Law, with reference to the power of the Commission to compel the erection of additions and extensions. *Ante*, 50.

241. Accepting Provisions of Act—To Maintain Depot.

§ 3. Any railroad corporation accepting the provision of this Act and re-locating a portion of its main line under the provisions thereof shall forever maintain its depot and operate its main line as re-located.

NOTE.—See section 50 of the Public Utilities Commission Law, with reference to the power of the Commission to compel the erection of additions and extensions. *Ante*, 50.

242. Power of Corporation Making Change—Condemnation.

§ 4. Every such corporation making the change in the line used by it as its main line provided for in section one of this Act is hereby vested with full power and authority to acquire lands necessary for the right of way and depot purposes for the purpose of making such change in its line and for establishing the necessary depots thereon; and if it is unable to obtain such lands by purchase it may acquire them in the manner and under the conditions provided by the Act to provide for the exercise of the right of eminent domain.

NOTE.—See section 59 of the Public Utilities Commission Law, with reference to eminent domain. *Ante*, 59.

XV. RAILROAD COMPANIES—CONSOLIDATION—EXTENDING CORPORATE RIGHTS AND FRANCHISES.

AN Act to ratify consolidations, and sales and purchases between railroad companies of this State and railroad companies of other states, and to confirm in the purchasing companies, or in the companies formed by such consolidations, as the case may be, during the term of their corporate existence, and of any extensions thereof, all the corporate rights, franchises, privileges and immunities, sold and purchased, or belonging or pertaining to the constituent companies, and to define the term of the corporate existence of such consolidated companies and to authorize them to renew their corporate existence. [Approved and in force June 9, 1897. L. 1897, p. 281.] (Hurd's Revised Statutes, 1917, Ch. 114 Secs. 198-201.)

243. Consolidation of Companies Ratified.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every agreement whether in form

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of deed of sale, articles of consolidation or otherwise, made and entered into between the first day of July in the year Anno Domini one thousand eight hundred and seventy-four and the first day of July, Anno Domini one thousand eight hundred and eighty-three, by and between any railroad company organized under the laws of this State, or of this State and any other state or states, and any railroad company or companies organized under the laws of any other state or states, providing or purporting to provide for the consolidation or merger of the capital stocks, corporate and other franchises, privileges and property of the respective companies parties thereto, and under which the consolidated company thereby created or attempted to be created, or its successor or lessee, now owns, controls or operates, or in possession of the several railway lines of the respective companies parties to such agreement, be, and the same is hereby ratified, approved and confirmed; and all the corporate rights, franchises, privileges and immunities of the several and respective companies parties to every such agreement, are hereby granted, vested and confirmed in the consolidated company thereby created or attempted to be created for and during the term of its corporate existence and of any renewal thereof.

244. Agreements Between Railroad Companies Ratified, Approved and Confirmed.

§ 2. That every agreement between any railroad company of this State, or of this State and any other state or states, and any railroad company or companies organized under the laws of any other state or states, made between the first day of July, Anno Domini one thousand eight hundred and seventy-four, and the first day of July, Anno Domini one thousand eight hundred and eighty-three, and providing or attempting to provide for the purchase by any such corporation of this State or of this State and any other state or states, of the property, corporate and other franchises, privileges and immunities of railroad corporations of any other state or states, and under which any such corporation of this State, or of this State and any other state or states, now owns, controls or operates, or is in possession of the railroad, railroads and appurtenances sought to be conveyed, is hereby ratified, approved and confirmed.

245. Term of Existence of Consolidated Company—Renewal of Corporate Existence.

§ 3. That whenever, in the articles of consolidation or other instrument creating or purporting to create such consolidated company the term of a corporate existence of said consolidated company shall have been fixed for any term of years, not exceeding fifty years, said term so fixed shall be held and deemed to be the lawful term of the corporate existence of said consolidated company; and the said consolidated company shall be and is hereby authorized to renew its corporate existence from time to time in such manner as shall be provided for by law for periods not longer than fifty years.

NOTE.—See the Act approved June 28, 1913, in force July 1, 1913, amending sec. 5 of the general railroad incorporation Act. (Hurd's Revised Statutes, 1917, Ch. 114, Sec. 5.) *Ante*, 106.

246. Emergency.

§ 4. WHEREAS, An emergency exists for the immediate taking effect of this Act, therefore the same shall take effect and be in force from and after its passage.

XVI. RATIFICATIONS OF CONSOLIDATIONS AND MERGERS.

AN ACT to ratify consolidations and mergers between two or more railroad companies organized under the laws of this State and to confirm in the company or companies formed by such consolidation or merger, as the case may be, during the term of their, or its corporate existence, and of any extension thereof, all the corporate rights, property, franchises, privileges and immunities, consolidated or merged or belonging or pertaining to the constituent companies and to define the term of the corporate existence of such merged or consolidated companies and to authorize them to renew their corporate existence. [Approved May 27, 1907. In force July 1, 1907. L. 1907, p. 473.] Hurd's Revised Statutes, 1917, Ch. 114, Secs. 237-240.)

247. Consolidation of Companies Ratified.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every agreement, whether in form of deed or sale, articles of consolidation, merger or otherwise, made and entered into between the first day of January, the year Anno Domini one thousand eight hundred and eighty-two and the first of January, the year Anno Domini one thousand eight hundred and eighty-three by and between two or more railroad companies organized under the laws of this State, providing or purporting to provide for the consolidation or merger, of the capital stocks, corporate and other franchises, privileges and property of the respective companies parties thereto, and under which the consolidated company thereby created or attempted to be created, or its successor or lessee, now owns, controls or operates, or is in possession of the several railway lines of the respective companies parties to such agreement, be, and the same is hereby ratified, approved and confirmed; and all the corporate rights, franchises, privileges and immunities of the several and respective companies parties to every such agreement, are hereby granted, vested and confirmed in the consolidated company thereby created or attempted to be created for and during the term of its corporate existence and of any renewal thereof.

248. Agreements Between Railroad Companies Ratified, Approved and Confirmed.

§ 2. That every agreement between two or more railroad companies organized under the laws of this State made between the first day of January, in the year Anno Domini one thousand eight hundred and eighty-two and the first day of January, the year Anno Domini one thousand eight hundred and eighty-three, providing or attempting to provide for the consolidation or merger, by purchase or otherwise, of the capital stock, corporate and other franchises, privileges and property of the respective companies parties thereto, under which agreement possession has been had of the railroads sought to be conveyed thereby, and every indebtedness heretofore created, and every act and contract, otherwise lawful, heretofore done or entered into in the name of such consolidated company by any persons or corporations acting as or on behalf of such consolidated company, are hereby ratified, approved and confirmed.

249. Term of Existence of Consolidated Company—Renewal of Corporate Existence.

§ 3. That the consolidated company or the company to and with which any two or more railroad companies organized under the laws of this State may have been merged or consolidated, as mentioned in the foregoing sections, shall be held and deemed to have a corporate existence for the term of fifty years from and after the date of such consolidation or merger; and the consolidated company, or the company with which the merger was effected and made, shall be and is hereby authorized to renew its corporate existence from time to time in such manner as shall be provided for by law for periods not longer than fifty years and the said consolidated company or the company with which the merger was affected and made shall be

subject to the general laws of this State, now in force, or which may hereafter be passed, regulating railroad corporations.

NOTE.—See the Act approved June 28, 1913, and in force July 1, 1913, amending section 5 of the general railroad incorporation Act. (Hurd's Revised Statutes, 1917, Ch. 114, Sec. 5.) *Ante*, 106.

250. Resolution of Acceptance.

§ 4. Any such consolidated corporation, desiring to avail itself of the provisions of this Act, shall file with the Secretary of State, a certified copy of a resolution of its stockholders accepting and agreeing to be bound by such provision.

NOTE.—An enactment of the General Assembly providing for the consolidation of railroad corporations and entitled, "An Act for an Act to increase the powers of railroad corporations," approved June 30, 1885. In force July 1, 1885. (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 196, 197), is repealed by implication. The Act is in conflict with sections 20, 21, 22, 27, and 29 of the Public Utilities Commission Law. *Ante*, 20, 21, 22, 27, 29.

XVII. RECEIVING, CARRYING AND DELIVERING GRAIN.

AN ACT regulating the receiving, transportation and delivery of grain by railroad corporations, and defining the duties of such corporations with respect thereto. [Approved April 25, 1871. In force July 1, 1871. L. 1871, p. 636.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 118-123.)

251. Receive and Carry Grain Without Distinction.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every railroad corporation, chartered by or organized under the laws of this State or doing business within the limits of the same, when desired by any person wishing to ship any grain over its road, shall receive and transport such grain in bulk, within a reasonable time, and load the same either upon its track, at its depot, or in any warehouse adjoining its track or side track, without distinction, discrimination or favor between one shipper and another, and without distinction or discrimination as to the manner in which such grain is offered to it for transportation, or as to the person, warehouse or place to whom or to which it may be consigned.

NOTE.—See Secs. 37, 38 and 39 of the Public Utilities Commission Law, with reference to rates, discrimination and rebates. *Ante*, 37, 38, 39. See section 256a. The Act of June 30, 1919, which repeals the second section of this Act and alters the first section.

Weighing In—Receipt.

And at the time such grain is received by it for transportation, such corporation shall carefully and correctly weigh the same, and issue to the shipper thereof a receipt or bill of lading for such grain, in which shall be stated the true and correct weight.

Weighing Out—Shrinkage—Damages.

And such corporation shall weigh out and deliver to such shipper, his consignee or other person entitled to receive the same, at the place of delivery, the full amount of such grain, without any deduction for leakage, shrinkage or other loss in the quantity of the same.

In default of such delivery, the corporation so failing to deliver the full amount of such grain shall pay to the person entitled thereto the full market value of any such grain not delivered at the time and place when and where the same should have been delivered.

Evidence—Shortage.

If any such corporation shall, upon the receipt by it of any grain for transportation, neglect or refuse to weigh and receipt for the same, as aforesaid, the sworn statement of the shipper, or his agent having personal knowledge of the amount of grain so shipped, shall be taken as true, as to the amount so shipped; and in case of the neglect or refusal of any such corporation, upon the delivery by them of any grain, to weigh the same, as aforesaid, the sworn statement of the person to whom the same was

delivered, or his agent having personal knowledge of the weight thereof, shall be taken as true, as to the amount delivered. And if, by such statements, it shall appear that such corporation has failed to deliver the amount so shown to be shipped, such corporation shall be liable for the shortage, and shall pay to the person entitled thereto the full market value of such shortage, at the time and place when and where the same should have been delivered.

NOTE.—This section and the following one have been held in part unconstitutional in *Shellabarger Elevator Co. v. Illinois Cent. R. Co.*, 278 Ill. 333. See *St. Louis, A. & T. H. Co. v. Hill*, 14 Ill. App. 579; etc. See also Hurd's Revised Statutes 1917, Chapter 114, section 84 (1.)

252. Scales—Weighing—Penalties.

§ 2. At all stations or places from which the shipments of grain by the road of such corporation shall have amounted during the previous year to fifty thousand (50,000) bushels or more, such corporation shall, when required so to do by the persons who are the shippers of the major part of said fifty thousand bushels of grain, erect and keep in good condition for use, and use in weighing grain to be shipped over its road, true and correct scales, of proper structure and capacity for the weighing of grain by carload in their cars after the same shall have been loaded. Such corporation shall carefully and correctly weigh each car upon which grain shall be shipped from such place or station, both before and after the same is loaded, and ascertain and receipt for the true amount of grain so shipped. If any such corporation shall neglect or refuse to erect and keep in use such scales when required to do so as aforesaid, or shall neglect or refuse to weigh in the manner aforesaid any grain shipped in bulk from any station or place, the sworn statement of the shipper, or his agent having personal knowledge of the amount of grain shipped, shall be taken as true as to the amount so shipped. In case any railroad corporation shall neglect or refuse to comply with any of the requirements of section first, second and fifth of this Act, it shall, in addition to the penalties therein provided, forfeit and pay for every such offense and for each and every day such refusal or neglect is continued the sum of one hundred dollars (\$100), to be recovered in an action of debt before any justice of the peace, in the name of the People of the State of Illinois, such penalty or forfeiture to be paid to the county in which the suit is brought, and shall also be required to pay all costs of prosecution, including such reasonable attorney's fees as may be assessed by the justice before whom the case may be tried. [As amended by Act approved May 18, 1877. In force July 1, 1877. L. 1877, p. 168.]

NOTE.—See *Taber v. Cleveland, C. C. & St. Louis R. Co.*, IV I. P. U. C. 96. See note to preceding section.

253. Delivery—Penalty.

§ 3. Every railroad corporation which shall receive any grain in bulk for transportation to any place within the State, shall transport and deliver the same to any consignee, elevator, warehouse, or place to whom or to which it may be consigned or directed: *Provided*, such persons, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section, shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property by such neglect or refusal to deliver such grain as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered, and costs of suit, including such reasonable attorney's fees as shall be taxed by the court. And in case of any second or later refusal of such railroad corporation to comply with the requirements of this section, such corporation shall be by the court, in the action on which such failure or refusal shall be found, adjudged to pay, for the use of the People of this State, a sum of not less than \$1,000, nor more than \$5,000, for each and every such failure or refusal, and this

may be a part of the judgment of the court in any second or later proceeding against such corporation. In case any railroad corporation shall be found guilty of having violated, failed, or omitted to observe and comply with the requirements of this section, or any part thereof, three or more times, it shall be lawful for any person interested to apply to a court of chancery, and obtain the appointment of a receiver to take charge of and manage such railroad corporation until all damages, penalties, costs and expenses adjudged against such corporation for any and every violation shall, together with interest, be fully satisfied.

254. Right to Change Consignment.

§ 4. All consignments of grain to any elevator or public warehouse shall be held to be temporary, and subject to change by the consignee or consignor at any time previous to the actual unloading of such property from the cars in which it is transported. Notice of any change in consignment may be served by the consignee on any agent of the railroad corporation having the property in possession who may be in charge of the business of such corporation at the point where such property is to be delivered; and if, after such notice, and while the same remains uncanceled, such property is delivered in any way different from such altered or changed consignment, such railroad corporation shall, at the election of the consignee or person entitled to control such property, be deemed to have illegally appropriated such property to its own use, and shall be liable to pay the owner or consignee of such property double the value of the property so appropriated; and no extra charge shall be permitted by the corporation having the custody of such property, in consequence of such change of consignment.

255. Receiving on Track—Rights of Owners Saved.

§ 5. Any consignee or person entitled to receive the delivery of grain transported in bulk by any railroad, shall have twenty-four hours, free of expense, after actual notice of arrival by the corporation to the consignee, in which to remove the same from the cars of such railroad corporation, if he shall desire to receive it from the cars on the track; which twenty-four hours shall be held to embrace such time as the car containing such property is placed and kept by such corporation in a convenient and proper place for unloading. And it shall not be held to have been placed in a proper place for unloading, unless it can be reached by the consignee, or person entitled to receive it, with teams or other suitable means for removing the property from the car, and reasonably convenient to the depot of such railroad corporation at which it is accustomed to receive and unload merchandise consigned to that station or place. Nothing herein contained, however, shall be held to authorize the changing of any consignment of grain, except as to the place at which it is to be delivered or unloaded, nor shall such change of consignment, in any degree, affect the ownership or control of property in any other way.

256. Receipt and Delivery at Crossings, Etc.

§ 6. Every railroad corporation organized or doing business under the laws of this State, or authority thereof, shall receive and deliver all grain consigned to its care for transportation at the crossings and junctions of all other railroads, canals, and navigable rivers. Any violation of this section shall render any such railroad corporation subject to the same penalty as contained in section 3 of this Act.

NOTE.—See section 44 of the Public Utilities Commission Law, with reference to the interchange of traffic or service. *Ante*, 44. Section 7 on repeal omitted, see Hurd's Revised Statutes 1917, Ch. 131, sec. 5.

AN ACT entitled, "An Act regulating the receiving, transportation and delivery of grain by railroad corporations, and defining the duties of such corporations with respect thereto." (Laws of Illinois, 1919, p. 716. Approved June 30, 1919.)

256a. Receive and Carry Grain Without Distinction.

Be it enacted by the People of the State of Illinois, represented in the General Assembly: That every railroad corporation, chartered by or

organized under the laws of this State or doing business within the limits of the same, when desired by any person wishing to ship any grain over its road, shall receive and transport such grain in bulk, within a reasonable time, and permit the loading of the same either upon its track, at its depot, or in any warehouse adjoining its track or side track, without distinction, discrimination or favor between one shipper and another, and without distinction or discrimination as to the manner in which such grain is offered to it for transportation, or as to the person, warehouse or place to whom or to which it may be consigned.

If any such corporation shall, upon the receipt by it of any grain for transportation, neglect or refuse to weigh the same the sworn statement of the shipper, or his agent having personal knowledge of the amount of grain so shipped, shall be taken as *prima facie* evidence of the amount so shipped; and in case of the neglect or refusal of any corporation, upon the delivery by it of any grain, power vested in either the Auditor of Public Accounts or the State Board of Equalization, such abstracts, reports, schedules, or other papers or documents shall be filed with, such duty and power shall be discharged and exercised by the Tax Commission.

§ 28. Nothing contained in this Act shall be construed to give the Tax Commission any power, jurisdiction or authority to review, revise, correct or change any individual assessment made by any local assessment officer.

XVIII. WEIGHING GRAIN IN BULK BY RAILROAD COMPANY.

AN ACT relating to the receipt, shipment, transportation and weighting of grain in bulk by railroad companies. [Approved June 15, 1887. In force July 1, 1887. L. 1887, p. 253.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 192-195.)

257. Road Receiving for Transportation Shall Furnish Suitable Appliances for Weighing, Etc.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in all counties of the third class, and in all cities having not less than 50,000 inhabitants, where bulk grain, millstuffs or seeds are delivered by any railroad transporting the same from initial points to another road for transportation to other points, such road or roads receiving the same for transportation to said points or other connections leading thereto, shall provide suitable appliances for unloading, weighing and transferring such property from one car to another without mixing or in any way changing the identity of the property so transferred, and such property shall be accurately weighed in suitably covered hopper scales, which will determine the actual net weight of the entire contents of any carload of grain millstuffs or seeds at a single draft, without gross or tare, and which weights shall always be given in the receipts or bills of lading and used as the basis of any freight contracts affecting such shipments between such railroad companies and the owners, agents or shippers of such grain, millstuffs or seeds so transported and transferred.

NOTE.—The jurisdiction of the Board of Railroad and Warehouse Commissioners, in so far as it does not conflict with the Public Utilities Commission Law, is transferred to the Commission (Public Utilities Commission Law, sec. 81). Wherever, therefore, in the four sections of this statute the words "Board of Railroad and Warehouse Commissioners" or "Railroad and Warehouse Commissioners" appear, read "State Public Utilities Commission."

258. Where Original Car Runs Through Without Transfer.

§ 2. The practice of loading grain, millstuffs or seeds into foreign or connecting-line cars at the initial point from which the grain, millstuffs or seeds are originally shipped, or the running of the original car through without transfer, shall not relieve the railroad making the contract to transport the same to its destination or connection leading thereto, from weighing and transferring such property in the manner aforesaid, unless

the shipper, owner or agent of such grain, millstuffs or seeds shall otherwise order or direct.

259. Liability of Railroad Company for Neglect or Failure—Proceedings.

§ 3. Any railroad company neglecting or refusing to comply promptly with any and all of the requirements of either sections 1 or 2 of this Act shall be liable in damages to the party interested, to be recovered by the party damaged in an action of assumpsit and such party may proceed by mandamus against any railroad company so refusing or neglecting to comply with the requirements of this Act; and if the shipper, owner or agent of any such grain, millstuffs or seeds shall fail or neglect to proceed by mandamus, it shall then be the duty of the Railroad and Warehouse Commissioners of this State, upon complaint of the party or parties interested, to proceed against the railroad failing or refusing to comply with the provisions of this Act; and all the powers heretofore conferred by law upon the Board of Railroad and Warehouse Commissioners of this State, shall be applicable in the conduct of any legal proceeding commenced by such Commissioners under this Act.

260. Penalty—How Recovered.

§ 4. Any railroad company so refusing or neglecting as aforesaid, shall be liable to a penalty of not less than \$100 nor more than \$500 for each neglect or refusal as aforesaid, to be recovered in an action of assumpsit in the name of the People of the State of Illinois for the use of the county in which such act or acts of neglect or refusal shall occur, and it shall be the duty of the Railroad and Warehouse Commissioners to cause prosecutions for such penalties to be instituted and prosecuted.

260a. Discriminations.

NOTE.—The following Act is repealed by implication: "An Act to prevent extortion and unjust discrimination in the rates charged for the transportation of passengers and freights on railroads in this State and to punish the same and prescribe a mode of procedure and rules of evidence in relation thereto, and to repeal an Act entitled 'An Act to prevent unjust discriminations and extortions in the rates to be charged by the different railroads in this State for the transportation of freights on said roads,' approved April 7, 1871." (Approved May 2, 1873. In force July 1, 1873. Hurd's Revised Statutes 1917, Ch. 114 Secs. 124-133. Plenary powers are conferred upon the Commission, by the Public Utilities Commission Law, with reference to tariffs, rates, schedules, classifications, discriminations and rebates. See Public Utilities Commission Law, Secs. 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43. *Ante* 33-43.

XIX. CITIES AND VILLAGES.

AN ACT to provide for the incorporation of cities and villages. [Approved April 10, 1872. In force July 1, 1872. L. 1871-2, p. 218.] (Hurd's Revised Statutes, 1917, Ch. 24, Art. 5, Sec. 62.)

261. Powers of Cities and Villages.

The city council in cities, and the president and the board of trustees in villages, shall have the following powers:

* * * * *

Twenty-sixth.—To require railroad companies to fence their respective railroads, or any portion of the same, and to construct cattle guards, crossings of streets and public roads, and keep the same in repair, within the limits of the corporation. In case any railroad company shall fail to comply with any such ordinance, it shall be liable for all damages the owner of any cattle or horses or other domestic animal may sustain by reason of injuries thereto while on the tracks of such railroad, in like manner and extent as under the general laws of this State, relative to the fencing of railroads; and actions to recover such damages may be instituted before any justice of the peace or other court of competent jurisdiction.

Twenty-seventh.—To require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads. * * * To compel and require railroad companies to make and keep open and to keep in repair ditches,

drains, sewers and culverts along and under their railroad tracks so that filthy or stagnant pools of water cannot stand on their grounds or right-of-way, and so that the natural drainage of adjacent property shall not be impeded.

* * * * *

Eighty-ninth.—The city council shall have power, by condemnation or otherwise, to extend any street, alley or highway over or across, or to construct any sewer under or through any railroad track, right-of-way, or land of any railroad company (within the corporate limits); but where no compensation is made to such railroad company the city shall restore such railroad track, right-of-way or land to its former state, or in a sufficient manner not to have impaired its usefulness.

Ninetieth.—The city council or board of trustees shall have no power to grant the use of, or the right to lay down, any railroad tracks in any street of the city to any steam, dummy, electric, cable, horse or other railroad company, whether the same shall be incorporated under any general or special law of the State, now or hereafter in force, except upon the petition of the owners of the land representing more than one-half of the frontage of the street, or so much thereof as is sought to be used for railroad purposes, and when the street or part thereof sought to be used shall be more than one mile in extent, no petition of land owners shall be valid unless the same shall be signed by the owners of the land representing more than one-half of the frontage of each mile and of the friction of a mile, if any in excess of the whole mile's measuring from the initial point named in such petition, of such street or of the part thereof sought to be used for railroad purposes.

NOTE.—Paragraph twenty-fifth of Article 5 of the Cities and Villages Act gives the city or village authorities power "to provide for and change the location, grade and crossing of any railroad." This provision is repugnant to section 58 of the Public Utilities Commission Law and is therefore impliedly repealed.

A portion of paragraph twenty-seventh of Article 5 empowers the city or village authorities "to compel such railroads to raise or lower their railroad tracks to conform to any grade which may, at any time, be established by said city, and where such tracks run lengthwise of any such street, alley or highway, to keep their railroad tracks on a level with the street surface, and so that such tracks may be crossed at any place on such street, alley or highway." This provision is in conflict with section 58 of the Public Utilities Commission Law and is therefore impliedly repealed. *Ante*, 58.

Paragraph eighty-ninth of Article 5, which is reproduced above, should be construed in connection with section 58 of the Public Utilities Commission Law, and the power therein conferred upon city or village authorities to "extend any street, alley or highway," etc., should be understood to be subject to the permission of the Public Utilities Commission. *Ante*, 58.

AN ACT to amend an Act entitled, "An Act to enlarge the power of cities and villages in relation to harbors, canals, slips, wharves, docks, levees, piers, quay walls, breakwaters and all harbor structures, facilities, connections, improvements and utilities constructed or operated in connection therewith and for the purpose of carrying out such power to authorize the acquisition and condemnation of property and to authorize the use, occupation, recovery and acquisition of artificially made or reclaimed lands of the State and the reclamation and acquisition of the submerged lands of the State, and to repeal an Act entitled, 'An Act to enlarge the power of cities in relation to harbors, canals, wharves, docks, piers, slips, and other harbor structures, facilities, improvements and utilities constructed or operated in connection therewith, to authorize the acquisition and condemnation of property and the use, occupation, reclamation and acquisition of the submerged lands of the State in carrying out such power and to repeal all Acts or parts of Acts in conflict therewith,' approved June 10, 1911, and to repeal all other Acts or parts of Acts in conflict therewith," approved June 23, 1913, in force July 1, 1913, by adding thereto three (3) additional sections, to be known as sections 17a, 17b and 17c. (Approved May 18, 1917.)

262. Recreation Docks, Etc.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That an Act entitled, "An Act to enlarge the power of cities and villages in relation to harbors, canals, slips, wharves, docks, levees, piers, quay walls, breakwaters and all harbor structures, facilities, connections, improvements and utilities constructed or operated in connection therewith and for the purpose of carrying out such power

to authorize the acquisition and condemnation of property and to authorize the use, occupation, recovery and acquisition of artificially made or reclaimed lands of the State and the reclamation and acquisition of the submerged lands of the State, and to repeal an Act entitled, 'An Act to enlarge the power of cities in relation to harbors, canals, wharves, docks, piers, slips and other harbor structures, facilities, improvements and utilities constructed or operated in connection therewith, to authorize the acquisition and condemnation of property and the use, occupation, reclamation and acquisition of the submerged lands of the State in carrying out such power, and to repeal all Acts or parts of Acts in conflict therewith,' approved June 10, 1911, and to repeal all other Acts or parts of Acts in conflict therewith," approved June 23, 1913, in force July 1, 1913, be and the same is hereby amended by adding thereto three (3) additional sections, to be known as sections 17a, 17b and 17c and which additional sections shall read as follows:

§ 17a. Every such city and village shall also have the right, power and authority and such right, power and authority are hereby granted to use for public recreation purposes any portion of any such utility which is not immediately needed for transportation uses or which can be used for such recreation purposes without interfering with the use of such utility for transportation purposes in the judgment of the corporate authorities of such city or village.

§ 17b. In connection with the use of any portion of such utility for recreation purposes, as specified in the previous section hereof, every such city and village shall, also, have the right, power and authority and such right, power and authority are hereby granted to provide, by lease or contract, for the sale in or on such utility of food, non-alcoholic drinks and merchandise and for the giving in or on such utility of dances, concerts, exhibitions and other entertainments and for check-room privileges incidental thereto: *Provided, however*, that each such lease or contract shall be terminable by such city or village, either with or without compensation therefor as may have been therein stipulated, upon reasonable notice, whenever in the judgment of the corporate authorities of such city or village the transportation necessities shall make such termination desirable: *And, provided, furthermore*, that no such lease or contract shall be entered into for a period exceeding five (5) years except in conformity with the provisions of section 11 of this Act.

§ 17c. Every power, right or authority which by this Act is granted to or conferred upon any such city or village, may be exercised by the concurrence of a majority of all the members elected in the city council of such city or village.

263. Emergency.

§ 2. Whereas, an emergency exists, this Act shall take effect immediately upon its passage.

XX. CORPORATIONS FOR UNION DEPOTS.

AN ACT for the formation of corporations for the purpose of constructing, maintaining and operating union depots and to repeal "An Act authorizing the formation of union depots and stations for railroads in this State," approved April 7, 1875, in force July 1, 1875. [Approved May 28, 1913. In force July 1, 1913. L. 1913, p. 196.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 56-61a.

264. Who May Form Corporation—What Articles to Contain.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in order to facilitate the public convenience and safety in the transmission of goods and passengers from one railroad to another, and to prevent the unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, any number of persons, not less than five, are hereby authorized to form themselves, or any two or more railroad companies may themselves form or join individuals in forming a corporation for the purpose of constructing, establishing and maintaining a union station for passengers or freight depots,

or for both, in any city, town or place in this State, with the necessary officers, and rooms convenient for the same and appurtenances thereto, and for that purpose may make and sign articles in which shall be stated the number of years not to exceed fifty, the same is to continue, the city, town or place in which the same is to be located, and the amount of the capital stock of said company which shall not exceed fifty million dollars, the amount of each share of stock, the name and place of residence of its directors, which shall not be less than five nor exceed fifteen, who shall manage its affairs for the first year and until others are chosen in their place, and shall also state the amount of stock taken by each subscriber.

NOTE.—See, in this connection, section 50 of the Public Utilities Commission Law, pertaining to the power of the Commission to compel the erection of additions and new structures and the making of necessary repairs and alterations. *Ante*, 50.

See *Terre Haute & I. R. Co., v. Peoria & P. U. R. Co.*, 167 Ill. 296 Affg. 61 Ill. App. 405 decided under prior Act.

265. Articles of Association.

§ 2. Any association of persons or corporations desiring to become incorporated under the provisions of this Act shall present the articles of association to the Circuit Court of the county in which such city or place is, or to the judge thereof in vacation, with the petition from such members for a certificate of incorporation under the provisions of this Act, to which petition shall be appended a certificate of at least two railroad companies who have tracks leading into said city, town or place, stating its public utility and that they expect to make arrangements for its use when it shall be constructed, signed by the president of their respective companies.

266. Certificate of Incorporation.

§ 3. If the Circuit Court, or any judge thereof in vacation, shall be satisfied that said certificate has been signed by such companies, then the said court or judges, upon filing the said petition, articles and certificate aforesaid, with the clerk of the court, shall grant to the said association a certificate of incorporation, which may be in the following form, to-wit:

WHEREAS, A, B and C, etc. (stating the names), have filed in the office of the clerk of the Circuit Court their articles of association, in compliance with the provisions of an Act entitled, "For an Act for the formation of corporations for the purpose of constructing, maintaining and operating union depots and to repeal 'An Act authorizing the formation of union depots and stations for railroads in this State,' approved April 7, 1875, in force July 1, 1875, approved (stating day of approval), with their petition of incorporation, under the name and style of; they are therefore hereby declared a body politic and corporate, by the name and style aforesaid, with all the powers, privileges and immunities granted in the Act above named. By order of the Circuit Court (or judge thereof).

Attest.....
Clerk of the Circuit Court of.....

And thereupon, upon filing the same, or a certified copy thereof, in the office of the Secretary of State, and upon payment of incorporation fees, the said association, from the time of such filing, shall be a corporation under the laws of this State.

267. Corporate Powers Defined—Provisos and Limitations.

§ 4. Every corporation formed under this Act, in addition to the general powers conferred by the laws of the State in relation to corporations, shall have power:

First—To take and hold such real estate as it may acquire either by conveyance to such corporation, or such as it may acquire under the provisions of this Act by condemnation, and which shall be necessary for the transaction of its business.

Second—To take, occupy and condemn any land and real estate, or any interest therein needed for the establishment of such union station or depot, and necessary approaches thereto, and the same proceedings shall be had therefor as are now or may hereafter be provided by law concerning the condemnation of lands, for or by railroad companies in this State, so far as such laws are applicable to the purposes of this Act; and when so

condemned, the said land, and any interest therein, shall belong to such corporation for the purposes of this Act: *Provided*, that nothing in this Act shall be construed to authorize the condemnation of depot grounds of any railroad which is not of the same gauge as those joining in the petition: *Provided, further*, that none of the provisions of this Act relating to the condemnation of lands shall extend to any land or lands to which any municipal corporation has title.

Third—With the consent of the corporation authorities of the city, town or place in which said station or depot is to be constructed, to have the right to lay the necessary track or tracks over, upon or under such streets or roads of said city, town or place as may be necessary to make the necessary connections with railroads proposing to use said union depot and may, with such consent, also construct such station or depot under, over or upon any such streets or roads: *Provided*, that all injury, if any, that may be occasioned to the property fronting on any streets or roads, by the laying of any railroad track or the location of any depot upon such streets or roads, under the provisions of this Act, shall be assessed and the assessment paid into the city treasury to the use of the owners of the property so injured by the corporation so appropriating such streets or roads, before such corporation shall have the right to lay any track or locate any depot over, under or upon such streets or roads.

NOTE.—See sections 45 and 46 of the Public Utilities Commission Law relative to track connections. *Ante*, 45, 46.

Paragraph 4 of section 4 of the Union Depot Act reads as follows: "Fourth—From time to time to borrow such sums of money as may be necessary for the construction, completion and furnishing or repairing of such station or depot, and to issue or dispose of their bonds for such amounts at such prices as they shall think proper, and to mortgage their corporate property and franchises for the purpose of securing the same." This paragraph is annulled by virtue of the provisions of the Public Utilities Commission Law relative to the creation of indebtedness and the issuance of bonds. (Public Utilities Commission Law, Secs. 20, 21.) *Ante*, 20, 21. See also the provision pertaining to additions and new structure. (Public Utilities Commission Law, Sec. 50.) *Ante*, 50.

Fifth—To open, from time to time, books of subscription to the remainder of the capital stock not taken by the subscribers to the articles of association. The General Assembly shall have power to enact, from time to time, laws to prevent and correct abuses and to prevent unjust discrimination and extortions in the management and prosecution of the business of any corporation formed under this Act and to enforce such laws by adequate penalties.

NOTE.—See sections 39, 41, 42 and 43 of the Public Utilities Commission Law, relative to discrimination and to power of the Commission to fix rates and regulations. *Ante*, 39, 41, 42, 43.

268. Term and Election of Directors.

§ 5. After the directors named in the articles of incorporation shall have served for one year, there shall be an annual election of directors, to be conducted in the manner prescribed in the Constitution of this State. The directors so elected shall serve for the ensuing year and notice of such election, appointing a time and place, shall be given by the directors as originally constituted for the first annual election, and thereafter by their successors in office, which notice shall be published not less than twenty days previous thereto in some newspaper published in the English language, in the city, town or place in which said station or depot is located.

269. No Discrimination.

§ 6. There shall be no discrimination against or in favor of any railroad company using or desiring to use the said union depot, but the terms, conditions and regulations adopted for the use of the same shall be, so far as practicable, uniform, and apply alike to all railroads using or desiring to use said union depot.

270. Repeal.

§ 7. An Act authorizing the formation of union depots and stations for railroads in this State, approved April 7, 1875, in force July 1, 1875, be and the same is hereby repealed.

XXI. MALICIOUS MISCHIEF, ETC.

AN ACT entitled, "An Act to punish persons for wilful injury to lines, poles and other apparatus used in transmitting or carrying electric current or messages," [Approved June 5, 1909. In force July 1, 1909. L. 1909, p. 177.] (Hurd's Revised Statutes, 1917, Ch. 38, Secs. 186, 187, 188, 189, 190, 191, 193, 242, 402.)

271. Malicious Mischief to Railroads.

§ 186. Whoever wilfully, and maliciously, displaces or removes, any switch, signal, or rail of any railroad, or displaces, or removes, any signal or signal-light, from any bridge that is built across any navigable stream in this State, or breaks down, rips up, injures or destroys any track bridge or other portion of any railroad, or places obstructions thereon, or places any false signal upon or along the line of any railroad track, or upon any bridge built across any navigable stream in this State, or does any act to any engine, machine or car of such railroad, with intent that any person or property being or passing on or over such railroad, or over or through, or under such bridge built across any navigable stream of this State, should be injured thereby, shall be imprisoned in the penitentiary not less than one year nor more than five years. Or if in consequence of any such act done with such intent, any person being or passing on or over such railroad, or over, through or under such bridge, built across any navigable stream of this State, suffers any bodily harm, or any property is injured, the person so offending, shall be imprisoned in the penitentiary not less than three nor more than ten years, and if in consequence of any such act, done with such intent, any person is killed, the person so offending, shall be deemed guilty of murder and punished accordingly. [As amended by Act approved May 31, 1879. In force July 1, 1879. L. 1879, p. 118.]

AN ACT to punish persons for removing waste, lubricated packing or other material from the journal boxes of engines, tenders or cars without authority. [Approved June 11, 1897. In force July 1, 1897. L. 1897, p. 203.]

272. Penalty for Removing Lubricated Packing, Etc.

§ 186a. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any person who shall maliciously remove any waste or lubricated packing or other material from the journal box or boxes of any railway engine, or tender, or any passenger coach, freight or railway car, owned, used or operated by any railroad company, person, corporation or receiver, upon any railroad in this State, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not more than one hundred dollars, or by imprisonment in the county jail for not less than ten nor more than thirty days, or by both such fine and imprisonment.

273. Combining to Injure Railroads.

§ 187. If any two or more persons shall conspire or combine to break down, take up, injure or destroy any railroad track, or railroad bridge, or to burn or destroy any engine, engine house, car house, machine shop, or any other building or machinery necessary to the free use of any railroad, every such person shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [2d L. 1861, p. 8, § 1.]

274. Obstructing Train Laden with Munitions of War, Troops, Etc.

§ 188. If any two or more persons shall attempt to prevent the passage of any railroad train, carrying any provisions, troops or munitions of war, for the use or in the employment of this State or of the United States, by any violence or offer of violence, or shall assemble themselves together for that purpose, or if any person shall induce, entice or persuade, or attempt to induce, entice or persuade any other person to do so, such persons, and each of them, shall be imprisoned in the penitentiary not less than one nor more than ten years. [2d L. 1861, p. 8, § 2.]

275. Attempting Injury to Railroads.

§ 189. Whoever shall maliciously make any attempt, although the same may not succeed, to place obstructions on any railroad track, to burn, blow up, or destroy any railroad bridge, or in any other way prevent the free and safe passage of trains on any railroad, shall be imprisoned in the penitentiary not less than one nor more than ten years. [2d L. 1861, p. 8, § 3.]

276. Influencing Others to Injure Railroads.

§ 190. Whoever shall maliciously hire, persuade or induce, attempt to hire, induce or persuade any person to burn or in any way injure or destroy any railroad bridge, to take up, injure or destroy or obstruct any railroad track, or any machine shop, engine house, power house, substation, engine or car, or to remove, loosen, cut, injure or destroy any railroad wires or insulators or to make any connection or contact with or cast any object upon any railroad wires, or remove, destroy, loosen or injure or burn any railroad poles or other machinery or property necessary for the operation of any railroad, shall be imprisoned in the penitentiary not less than one nor more than ten years. [As amended by Act approved June 7, 1911. In force July 1, 1911. L. 1911, p. 290.]

277. Railroad Engineers, Etc.

§ 191. Any engineer or person having charge of and running any railroad engine or locomotive who shall wilfully or unnecessarily kill, wound or disfigure any horse, cow, mule, hog or other useful animal shall, upon conviction, be fined in a sum not less than the value of the property so killed, wounded or disfigured and confined in the county jail for a period of not less than ten days; and any such engineer who shall wantonly or unnecessarily blow the engine whistle so as to frighten any team shall be liable to a fine of not less than \$10 nor more than \$50.

278. Injuring or Destroying Baggage.

§ 193. If any baggage master, express agent, stage driver, hackman or any other person, whose duty it is to handle, remove or take care of trunks, valises, boxes, packages or parcels, while loading, transporting, unloading, delivering or storing the same, whether or not in the employ of a railroad, steamboat or stage company, shall wantonly or recklessly injure or destroy the same, he shall be fined not exceeding \$200.

279. Property of Railroad Company.

§ 242. If any person shall purchase or receive for sale from any other person any link, pin, bearing, journal or other article of iron, brass or other metal which has been manufactured and is used exclusively for railroad purposes, and which shall have stamped thereon the name of some railroad company, or the initial letter thereof, without the consent in writing of the president, general manager or general superintendent of such railroad company, such person shall be fined in a sum not less than \$100 nor more than \$500, and be imprisoned not less than ten days nor more than ninety.

280. Offense Committed on Railroad Car or Water Craft.

When any offense is committed in or upon any railroad car passing over any railroad in this State, or any water craft navigating any of the waters with this State, and it cannot readily be determined in what county the offense was committed, the offense may be charged to have been committed and the offender tried in any of the counties through or along or into which such railroad car or water craft may pass or come, or can reasonably be determined to have been on or near the day when the offense was committed.

ACT to revise the law in relation to criminal jurisprudence. [Approved March 27, 1874. In force July 1, 1874.] (Hurd's Revised Statutes, 1917, Ch. 38, Secs. 41, 77.)

1. Railroads to Destroy Canada Thistles.

§ 41. If any company, association or person owning, controlling or operating a railroad shall refuse or neglect to dig up and destroy, or take other certain means of exterminating Canada thistles and other noxious weeds that may at any time be growing upon the right-of-way or other lands of such roads, or appertaining thereto, they shall be fined for each offense not less than \$50 nor more than \$200; the fine to be paid as in the preceding section. [L. 1869, p. 326, § 1, 2.]

2. Theft of Railroad Ticket.

§ 77. Whenever any person in the employ of any railroad company, whether such company is incorporated by this or any other state, shall fraudulently neglect to cancel or return to the proper officer, company or agent, any coupon or other railroad ticket or pass, with the intent to permit the same to be used in fraud or injury of any such company, or if any person shall steal or embezzle any such coupon or other railroad ticket or pass, or shall fraudulently stamp, or print, or sign any such ticket, coupon or pass, or shall fraudulently sell or put in circulation any such ticket, coupon or pass, the person so offending shall be punished by imprisonment in the penitentiary for the term of one year. [L. 1859, p. 154, § 2.]

AN ACT to punish the crime of stealing or malicious removal of journal bearings, fixtures or attachments, from locomotives, tenders, freight or passenger cars. [Approved June 1, 1899. In force July 1, 1899. L. 1889, p. 115.] (Hurd's Revised Statutes, 1917, Ch. 114, Sec. 204.)

3. Removal of Journal Bearings, Etc.—Penalty.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any person or persons who shall remove, take, steal, change, add to, take from, or in any manner interfere with any journal bearings or brasses, or any of the parts or attachments or any locomotive, tender or cars or any fixture or attachment belonging to, connected with, or used in operating any locomotive, tender or car owned, leased or used by any railroad or transportation company in this State, shall be subject to punishment by imprisonment in the penitentiary not less than one year, nor more than five years, in the discretion of the court or jury before whom the case is tried: *Provided*, that upon a plea of guilty being entered, the court may fix the penalty prescribed herein: *Provided, further*, that the removal of such journal bearings or brasses, fixtures or attachments as aforesaid, shall be the cause of wrecking any train, locomotive or other car in this State whereby the life or lives of any person or persons shall be lost as a result of the felonious or malicious stealing, interfering with, or removal of the fixtures aforesaid, the person or persons found guilty thereof shall be liable for murder as in other cases.

4a. Passes.

NOTE.—The following Act has been held to be unconstitutional and void: An Act to prevent buying, selling or fraudulently using passes upon railroads, steamboats or other public conveyances," approved June 10, 1897, in force July 1, 1897. See *Allardt v. People*, 197 Ill., 501.

4b. San Jose Scale.

AN ACT of the General Assembly entitled, "An Act to prevent the introduction and spread in Illinois of the San Jose scale and other dangerous insects and contagious diseases and fruits," approved and in force April 11, 1899, has been expressly repealed. See Hurd's Revised Statutes, 1917, Ch. 127a, Sec. 7.

AN ACT to revise the law in relation to criminal jurisprudence. [Approved March 27, 1874. In force July 1, 1874.] (Hurd's Revised Statutes, 1917, Ch. 38, Sec. 51.)

284. Cruelty to Animals by Railroads and Carriers.

No railroad or other common carrier in the carrying or transportation of any cattle, sheep, swine or other animals shall allow the same to be confined in any car more than thirty-six consecutive hours unless delayed by storm or accident, when they shall be so fed and watered as soon after the expiration of such time as may reasonably be done. When so unloaded they shall be properly fed, watered and sheltered during such rest by the owner, consignee or person in custody thereof, and in case of their default, then by the railroad company transporting them, at the expense of said owner, consignee or person in custody of the same; and such company shall have a lien upon the animals until the same is paid. A violation of this section shall subject the offender to a fine of not less than \$3 nor more than \$200. [As amended by Act approved May 17, 1907. In force July 1, 1907.]

AN ACT to provide for the punishment of any person who drinks any intoxicating liquor, or whom is intoxicated, in or upon railroad passenger cars in use for transportation of passengers, or in or about any railroad station or platform, and for conductors to make arrests therefor. [Approved May 25, 1911. In force July 1, 1911.] Hurd's Revised Statutes, 1917, Ch. 38, Secs. 539, 540, 541, 542.)

285. Drinking Intoxicating Liquor or Being Intoxicated Upon Any Railroad Car—Penalty.

§ 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any person who shall drink any intoxicating liquor, or who shall be intoxicated, in or upon any railroad smoking car, parlor car, day coach, interurban car or caboose car, in use for the transportation of passengers, or in or about any railroad station or platform, upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), or imprisoned in the county jail for not less than thirty (30) days, nor more than one hundred (100) days, or both such fine and imprisonment.

286. Conductor to Enforce Act—Arrest.

§ 2. Every railroad conductor, while on duty, is hereby authorized and empowered to exercise in any county of this State, for the purpose of enforcing the provisions of this Act, all the common law and statutory powers conferred upon sheriffs and it is hereby made the duty of all such conductors to enforce the preceding section of this Act, and to arrest without process any person who violates any provision thereof, and in so doing they shall be held to be acting for the State and not as employees of the company. Any person or persons so arrested shall be delivered by such conductor to some judge, justice of the peace, sheriff, constable or police officer at some station or place within the county in which the offense was committed, for trial, according to law: *Provided*, that if the car on which such arrest is made does not stop within the county within which such offense was committed, then such conductor shall deliver the person so arrested to some sheriff, constable or police officer of the county wherein such car shall first stop after such arrest, who shall deliver the person so arrested to some judge or justice of the peace of the county in which the offense was committed, for trial.

287. Penalty for Conductor Refusing to Comply.

§ 3. Any such railroad conductor who shall refuse or fail to comply with section 2 of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars (\$10) nor more than twenty-five dollars (\$25).

288. Copies of Act to be Posted—Penalty.

§ 4. The several railroad companies in this State shall, without unnecessary delay, cause printed copies of the three preceding sections of this Act to be kept posted in conspicuous places at all their stations along their lines of railroad in this State.

Every railroad company that shall neglect to post and keep posted such notices as required by this section shall for each offense forfeit the sum of fifty dollars (\$50), to be recovered in an action of debt, in the name of the People of the State of Illinois.

XXII. REVENUE.

AN ACT for the assessment of property and for the levy and collection of taxes. [Approved March 30, 1872. In force July 1, 1872.] (Hurd's Revised Statutes, 1917, Ch. 120, Secs. 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 109, 347.)

289. Schedules.

§ 40. Every person, company or corporation owning, operating or constructing a railroad in this State, shall return sworn lists or schedules of the taxable property of such railroad, as hereinafter provided.

NOTE.—See *People v. Illinois Northern Ry. Co.*, 248 Ill. 532; *People v. Wiggins Ferry Co.*, 257 Ill. 452; etc.

290. Time of Filing Schedule—Form of Same.

§ 41. They shall, in the month of May of the year 1873, and at the same time in each year thereafter when required, make out and file with the county clerks of the respective counties in which the railroad may be located, a statement or schedule showing the property held for right-of-way, and the length of the main and all side and second tracks and turnouts in such county, and in each city, town and village in the county, through or into which the road may run, and describing each tract of land, other than a city, town or village lot, through which the road may run, in accordance with the United States surveys, giving the width and length of the strip of land held in each tract, and the number of acres thereof. They shall also state the value of improvements and stations located on the right-of-way. New companies shall make such statement in May next after the location of their roads. When such statement shall have been once made, it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the county board; but the company shall, during the month of May, annually, report the value of such property, by the description set forth in the next section of this Act, and note all additions or changes in such right-of-way as shall have occurred.

291. "Railroad Track"—Description of.

§ 42. Such right-of-way, including the superstructures of main, side or second track and turnouts, and the station and improvements of the railroad company on such right-of-way, shall be held to be real estate for the purposes of taxation, and denominated "railroad track," and shall be so listed and valued; and shall be described in the assessment thereof as a strip of land extending on each side of such railroad track, and embracing the same, together with all the stations, and improvements, thereon, commencing at a point where such railroad track crosses the boundary line in entering the county, city, town or village, and extending to the point where such track crosses the boundary line leaving such county, city, town or village, or to the point of termination in the same, as the case may be, containing acres, more or less, (inserting name of county, township, city, town or village boundary line of same, and number of acres, and length in feet) and when advertised or sold for taxes, no other description shall be necessary.

NOTE.—See *C. B. & Q. R. Co. v. Paddock et al.*, 75 Ill. 616; *People v. Ill. Cent. R. R. Co.*, 215 Ill. 177; *People v. A. T. & S. F. Ry. Co.*, 206 Ill. 252. As to

valuation see *Illinois v. Illinois Cent. R. Co.* 27 Ill. 64; *Chicago & A. R. Co. v. Bd of Sup'rs. Livingston Co.*, 68 Ill. 458; etc.

292. How "Railroad Track" Listed and Assessed.

§ 43. The value of the "railroad track" shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track in such county, town, village, district or city bears to the whole length of the road in this State, except the value of the side or second track, and all turnouts, and all station houses, depots, machine shops, or other buildings belonging to the road, which shall be taxed in the county, town, village, district or city in which the same are located.

NOTE.—See *Chicago R. I. & P. R. Co. v. People* 4 Ill. App. 468 etc.

293. "Rolling Stock"—Schedule.

§ 44. The movable property belonging to a railroad company shall be held to be personal property, and denominated, for the purpose of taxation, "rolling stock." Every person, company or corporation owning, constructing or operating a railroad in this State, shall, in the month of May, annually, return a list or schedule, which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping and dining cars, express cars, baggage cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars.

NOTE.—See *Ohio & M. R. Co. v. Weber* 96 Ill. 443; *Titus v. Ginheimer* 27 Ill. 462 etc.

294. How "Rolling Stock" Listed and Taxed.

§ 45. The rolling stock shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track used or operated in such county, town, village, district or city bears to the whole length of the road used or operated by such person, company or corporation, whether owned or leased by him or them in whole or in part. Said list or schedule shall set forth the number of miles of main track on which said rolling stock is used in the State of Illinois, and the number of miles of main track on which said rolling stock is used elsewhere.

NOTE.—See *Cook County v. Chicago, B. & Q. R. Co.* 35 Ill. 460.

295. Personalty and Real Estate Other than "Rolling Stock" and "Railroad Track," Where Listed.

§ 46. The tools and materials for repairs, and all other personal property of any railroad except "rolling stock," shall be listed and assessed in the county, town, village, district or city wherever the same may be on the first day of May. All real estate, including the stations and other buildings and structures thereon, other than denominated "railroad track," belonging to any railroad, shall be listed as lands or lots, as the case may be, in the county, town, village, district or city where the same are located.

296. Assessment of Such Other Property.

§ 47. The county clerk shall return to the assessor of the town or district, as the case may require, a copy of the schedule or list of the real estate (other than "railroad track,") and of the personal property (except "rolling stock,") pertaining to the railroad; and such real and personal property shall be assessed by the assessor. Such property shall be treated in all respects, in regard to assessment and equalization, the same as other similar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms "lands," "lots," and "personal property."

297. Railroad Returns to Auditor.

§ 48. At the same time that the lists or schedules are hereinbefore required to be returned to the county clerks, the person, company or corporation running, operating or constructing any railroad in this State, shall return to the Auditor of Public Accounts sworn statements or schedules, as follows:

First—Of the property denominated "railroad track," giving the length of the main and side or second tracks and turn out, and showing the proportions in each county, and the total in the State.

Second—The "rolling stock," giving the length of the main track in each county, the total in this State, and the entire length of the road.

Third—Showing the number of ties in track per mile, the weight of iron or steel per yard, used in main and side tracks; what joints or chairs are used in track, the ballasting of road, whether gravel or dirt, the number and quality of buildings or other structures on "railroad track," the length of time iron in track has been used, and the length of time the road has been built.

Fourth—A statement or schedule showing:

1. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

2. The amount of capital stock paid up.

3. The market value, or if no market value, then the actual value or the shares of stock.

4. The total amount of all indebtedness, except for current expenses for operating the road.

5. The total listed valuation of all its tangible property in this State.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of Public Accounts.

298. Neglect to Return.

§ 49. If any person, company or corporation, owning, operating or constructing any railroad, shall neglect to return to the county clerks the statements or schedules required to be returned to them, the property so to be returned and assessed by the assessor shall be listed and assessed as other property. In case of failure to make returns to the Auditor, as hereinbefore provided, the Auditor, with the assistance of the county clerks and assessors, when he shall require such assistance, shall ascertain the necessary facts and lay the same before the State Board of Equalization. In case of failure to make said statements, either to the county clerk or Auditor, such corporation, company or person shall forfeit, as a penalty, not less than \$1,000 nor more than \$10,000 for each offense, to be recovered in any proper form of action, in the name of the People of the State of Illinois, and paid into the State treasury.

NOTE.—See *C. R. I. & P. Ry. Co. v. People*, 217 Ill., 165; *Chicago, B. & Q. R. Co. v. People* 136 Ill. 660; *Chicago & Northwestern Ry. Co. v. People* 195 Ill. 184; etc.

299. Schedules—Board to Assess Railroad Property.

§ 50. The Auditor shall, annually, on the meeting of the State Board of Equalization, lay before said board the statements and schedules herein required to be returned to him; and said board shall assess such property in the manner hereinafter provided.

300. Railroad Tax Book—Extending and Collecting Tax.

§ 51. The county clerk shall procure, at the expense of the county, a record book, properly ruled and headed, in which to enter the railroad property of all kinds, as listed for taxation, and shall enter the valuations as assessed, corrected and equalized, in the manner provided by this Act; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. And at the proper time fixed by this Act for delivering tax books to the county collector, the clerk shall attach a warrant,

under his seal of office, and deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes therein charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and be filed in the office of the county clerk for future use.

301. Description of Platted Land.

§ 52. When any railroad company shall make or record a plat of any contiguous lots or parcels of land belonging to it, the same may be described as designated on such plat.

302. Board of Equalization to Assess—How Tax Collected.

§ 54. The Auditor shall annually, on the meeting of the State Board of Equalization, lay before said board the statement or schedule herein required to be returned to him; and said board shall assess the capital stock of such telegraph company, in the manner hereinafter provided. The tax charged on the capital stock of telegraph companies shall be placed in the hands of county collectors, in a book provided for that purpose, the same as is required for railroad property, and may be included in same book with railroad property.

NOTE.—The State Board of Equalization was abolished by the Act of 1919 creating the State Tax Commission.

303. Office Furniture—How Listed and Assessed.

§ 55. The office furniture and other personal property of telegraph companies shall be listed and assessed in the county, town, district, village or city where the same is used or kept.

304. Board to Assess "Railroad Track" and "Rolling Stock"—Distribution of Values—Extension of Tax.

§ 109. Said board [the State Board of Equalization] shall also assess the railroad property denominated in this Act as "railroad track" and "rolling stock;" and said board is hereby given the power and authority, by committee or otherwise, to examine persons and papers. The amount so determined and assessed shall be certified by the Auditor to the county clerks of the proper counties. The county clerk shall, in like manner, distribute the value, so certified to him by the Auditor, to the county and to the several towns, districts, villages and cities in his county entitled to a proportionate value of such "railroad track" and "rolling stock." And said clerk shall extend taxes against such values, the same as against other property in such towns, districts, villages and cities.

NOTE.—The State Board of Equalization was replaced by the Act of 1919 by the State Tax Commission.

305. Dates for Listing Changed.

§ 347. All lists, schedules, returns and statements heretofore required by law to be made between the first day of May and the first day of July by the assessors or by the owner of property, or person required to list the same, shall hereafter be made between the first day of April and the first day of June of each year.

AN ACT to authorize the levying of special assessments upon lands, railroads, public highways and municipal corporations situate within any drainage district so as to provide the funds necessary to pay the cost of construction for benefits that shall have been conferred by the construction of any work of improvement, without special assessments having been legally levied prior thereto, and providing for the issuance of bonds payable out of such special assessments, authorized by this Act to be levied. (Approved June 11, 1917.)

306. Special Assessment for Drainage District.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That authority is hereby given to the commissioners of any drainage district organized under any law of the State of Illinois within which there shall have been heretofore, at the request

of such commissioners, made or constructed in good faith any work of improvement, and as a result of which the lands, railroads, public highways and municipal corporations within such district, or any part thereof, have been benefited, but prior to the construction of which improvements special assessments had not been legally levied thereon, to cause special assessments to be levied upon such of the lands, railroads, public highways and municipal corporations within any such drainage district after such improvement shall have been made as shall have been benefited thereby for the amount of the cost of such improvement but not in excess of the benefits, in the manner hereinafter provided.

§ 2. The amount of the cost of any such improvement so made shall be ascertained and determined by the commissioners of such drainage district and shall be equitably apportioned by them between the different lots, parcels of land, railroads, and public highways and municipal corporations within the drainage district, or such part thereof, according to the benefits conferred upon the respective lots, parcels of land, railroads, and public highways and municipal corporations, which determination and apportionment shall be evidenced by an appropriate resolution of the commissioners and in determining the cost the commissioners may include interest at not to exceed six per centum (6%) per annum on the amount of cost of such improvement from the time any such benefits shall have been actually conferred by the construction of such improvements. The resolution so adopted shall thereupon be spread upon the records of the commissioners and shall indicate the manner in which the commissioners have equitably apportioned the amount of the cost based wholly upon the benefits, between the different lots, parcels and tracts of land, railroads, public highways and municipal corporations within such district according to the proportions of benefits, if any, that it has been found and determined by the commissioners accrue to such lands, respectively, and the commissioners shall include as a part of such resolution an assessment roll, indicating the names of the respective owners of the different pieces of property assessed (if known to the commissioners), the legal descriptions of the lots, parcels and tracts of land, so assessed, and the respective amounts indicated by dollars and cents of such assessment, as they are proposed to be apportioned, and any part of any previous assessment for said improvement that may have been paid on account thereof.

The commissioners shall also include therein all railroads, public highways and municipal corporations to be affected by the proposed work, and the amount of benefits assessed, if any, accruing to the tracts or right-of-way of said railways and public highways and roads, and the streets and alleys of such municipal corporations.

An Act to provide for the organization of Skillet Fork River Drainage District and for the improvement of the channel of Skillet Fork River and its tributaries by special assessments on the property benefited thereby. (Approved April 11, 1917.)

NOTE.—An Act, embodying identical provisions, relative to the Little Wabash River Drainage District was approved June 26, 1917.

307. Skillet Fork Drainage District—Assessment of Railroad Property.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That, for the purpose of straightening, enlarging, deepening, embanking, constructing new or improved outlets or otherwise improving the channel, or any part thereof, of the Skillet Fork River and the bayous, lagoons and lesser streams tributary thereto for a more free flow of water and protection from overflow, a river drainage district to be known as Skillet Fork River Drainage District may be organized as hereinafter provided.

* * * * *

§ 47. When any work of the district organized under this Act drains or protects from overflow or proposes to drain or protect from overflow, either in whole or in part, any public or corporate road or railroad, or the streets and alleys of any municipal corporation, so as to benefit any such roads, streets and alleys, or other property of such corporate road or rail-

road or municipal corporation, so that the roadbed or traveled track or other property of such public or corporate road, railroad or municipal corporation will be improved by the construction of such work, the commissioners shall apportion to the township, if a public road, to the company, if a corporate road or railroad, or to the municipal corporation in the case of streets and alleys, such proportion of the cost and expenses thereof as to private individuals, and shall include such apportionment in said "commissioners' roll of assessments and benefits," and give to the corporate authorities so benefited, or, in case they are damaged, to the said corporate authorities so damaged, or benefited and damaged, as the case may be, the same notice and at the same time as shall be given to private individuals; and the matter of the amount of such assessments of benefits and damages is not agreed upon, shall be submitted to a trial by the same jury in the same manner as the benefits and damages to accrue to private individuals; and the said jury shall view and examine such property, road, railroad, streets and alleys, and shall proceed to assess the damages and benefits in like manner as to the lands of individuals, and no other or different notice shall be required to be given: *Provided*, that when the commissioners and corporate authorities of the township road, corporate road, or railroad, or municipal corporation, or any of them, agree as to the amount that they or any of them should contribute, the amount so agreed on shall be reported to the said jury when they meet to correct their assessment roll, and the amount so agreed upon shall be incorporated into said assessment roll when amended by said jury or commissioners. In case such assessment is made against any township in this State the commissioners of highways of such town shall cause the same to be levied and paid to the said district in such manner as may now or hereafter be provided by law.

* * * * *

§ 49. When any ditch or drain or other work of said district, enlarging any channel or water-course, is located by the commissioners on the line of any natural depression or water-course, crossing the road of any railroad company where no bridge or culvert or opening of sufficient capacity to allow the natural flow of water of such ditch or water-course is constructed, it shall be the duty of the commissioners to give notice to such railroad company to construct or enlarge such bridge or culvert or opening in the grade of such road, for such ditch or ditches or other work, of the dimensions named in such notice, within thirty days from the service thereof; and any railroad company neglecting, failing, or refusing so to do shall be liable to said district in the sum of twenty-five (\$25) dollars for each day said company shall have neglected or refused to construct such work, after the time fixed in such notice for constructing the same shall have expired, which damages or penalty may be recovered before a justice of the peace, if within his jurisdiction, or before any court of competent jurisdiction.

XXIII. PLATS.

AN ACT to revise the law in relation to plats. [Approved March 21, 1874. In force July 1, 1874.] Hurd's Revised Statutes, 1917, Ch. 109, Sec. 9.)

308. Plats of Highways, Etc., to be Recorded.

§ 9. Whenever any highway, road, street, alley, public ground, toll-road, railroad or canal is laid out, located, opened, widened or extended, or the location thereof altered, it shall be the duty of the commissioners, authorities, officers, persons or corporations, public or private, laying out, locating, opening, widening, extending or altering the same, to cause a plat thereof showing the width, courses and extent thereof, and making such reference to known and established corners or monuments that the location thereof may be ascertained, to be made, and recorded in the office of the recorder of the county in which the premises taken or used for the same, or any part thereof, are situated, within six months after such highway, road, street, alley, public ground, toll-road, railroad or canal is laid out,

located, opened, widened or extended, or the location thereof altered; and when any highway, road, street, alley, public ground, toll-road, railroad or canal is vacated, the order, ordinance or other declaration vacating the same shall be in like manner recorded. This Act shall not be constructed to alter or effect any law specifically providing for the recording of any such plat, or to require the same to be recorded sooner than is so specifically provided; except that any requirements to record such plat in any other place than is provided herein shall not excuse the parties from complying with this Act. Whoever shall refuse or neglect to comply with this section shall forfeit \$25, and the like sum for every month he shall continue in such refusal or neglect after conviction therefor, to be recovered before any justice of the peace of the county, in the name of the county, one-half to the use of the county and the other half to the use of the person complaining. [R. S. 1845, p. 487, § 33.]

NOTE.—An Act of the General Assembly entitled, "An Act to provide for the organization of road districts, the election and duties of officers therein, and in regard to roads and bridges, in counties not under township organization, and to repeal an Act and parts of Acts therein named," approved May 4, 1887, in force July 1, 1887, contained the following provisions: "In addition to the notices now required by law in proceedings for laying out, locating or opening of public roads, similar notices shall be served on any railroad company, across or alongside of whose railroad it may be proposed to locate a public road: *Provided*, that this Act shall not apply to the proceedings for opening streets in towns or cities." This statute has been expressly repealed. See L. 1913, p. 520.

XXIV. STREET RAILROADS.

AN ACT entitled "An Act in regard to street railroads," and to repeal certain Acts herein referred to. [Approved and in force March 7, 1899. L. 1899, p. 331.] (Hurd's Revised Statutes, 1917, Ch. 131a, Secs. 1-6.)

309. Eminent Domain.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any company which has been or shall be incorporated under the general laws of this State, for the purpose of constructing, maintaining or operating any horse, dummy or street railroad or tramway, may enter upon and appropriate any property necessary for the construction, maintenance and operation of its road, and all necessary siding, side tracks and appurtenances, and may, subject to the provisions contained in this Act, locate and construct its road upon and over any street, alley, road or highway, or across or over any waters in this State, in such manner as not to unnecessarily obstruct the public use of such street, alley, road or highway, or interrupt the navigation of such waters: *Provided*, every such street railway may be operated by animal, cable, electric or any other motive power that may have been or shall hereafter be granted to it by the proper public officers or authorities, except steam locomotive engines.

NOTE.—See *Denby v. Chicago & M. Elec. R. Co.*, 184 Ill. 426; *North Chicago City R. Co. v. Town of Lake View* 105 Ill. 207; *Goddard v. Chicago & Northwestern Ry. Co.* 174 Ill. 295; *Wilder v. Aurora D. K. & R. Elec. Trac. Co.* 216 Ill. 493; *Gillette v. Aurora Ry. Co.* 228 Ill. 261 holding that the statute does not relate to commercial railroads; *Chicago & S. Traction Co. v. Flaherty* 222 Ill. 67 holding that the same company cannot be both a commercial railroad and a street railroad; etc.

Relative to right to condemn property see *Metropolitan City R. Co. v. Chicago W. D. R. Co.* 87 Ill. 317; *Harvey v. Aurora & G. R. Co.* 186 Ill. 283; *Dewey v. Chicago & M. Elec. R. Co.* 184 Ill. 426; *Eddleman v. Union County Trac. & P. Co.* 217 Ill. 409; etc.

310. Compensation for Property Taken or Damaged.

§ 2. When it is necessary for the construction, maintenance or operation of such road, or the necessary sidings, side tracks or appurtenances, to take or damage private property, the same may be done, and the compensation thereof may be ascertained and made in the manner which may be then provided by law for the exercise of the right of eminent domain.

311. Location of Road—Consent—Notice—Damages.

§ 3. No such company shall have the right to locate or construct its road upon or along any street or alley, or over any public ground in any incorporated city, town or village without the consent of the corporate authorities of such city, town or village, nor upon or along any road or highway, or upon any public ground without any incorporated city, town or village, except upon the consent of the county board. Such consent may be granted for any period not longer than twenty years, on the petition of the company, upon such terms and conditions not inconsistent with the provisions of this Act, as such corporate authorities or county board, as the case may be, shall deem for the best interests of the public: *Provided*, no such consent shall be granted unless at least ten days' public notice of the time and place of presenting such petition shall have been first given by publication in some newspaper published in the city or county where such road is to be constructed, and except upon the condition that the company will pay all damages to owners of property abutting upon the street, alley, road, highway or public ground, upon or over which such road is to be constructed, which they may sustain by reason of the location or construction of the road; the same to be ascertained and paid in the manner provided by law for the exercise of the right of eminent domain.

Where, however, any company is now operating or may hereafter operate lines of street railway in an incorporated city, town or village, under ordinances or grants, obligating such street railway company to construct specified mileage of extensions or additional lines of street railway upon the order of such incorporated city, town or village, the consent of such incorporated city, town or village, for the construction of such specified mileage of extensions or additional lines of street railway may be granted, without a petition of the street railway company: *Provided, however*, that in such case the incorporated city, town or village shall give at least ten (10) days' public notice by publication in some newspaper published in the city, town or village where such road is to be constructed, of its intention to require the construction of such specified mileage or additional lines of street railway. In case such incorporated city, town or village shall give public notice as herein provided, no further public notice need be given, but the company shall pay all damages to owners of property abutting upon the streets, alleys, roads, highways or upon grades upon or over which such road is to be constructed, which they may sustain by reason of the location or construction of the road, as in other cases; such damages to be ascertained and paid in the manner provided by law for the exercise of the right of eminent domain. (As amended by Act of June 24, 1915.)

NOTE.—See *Goddard v. Chicago & N. W. R. Co.* 202 Ill. 362, Affg. 104 Ill. App. 526; *Russell v. Chicago & M. Elec. R. Co.* 205 Ill. 155, Revg. 98 Ill. App. 347; etc.

312. Control of Streets Reserved—Police Power.

§ 4. Every grant to any such company of a right to use any street, alley, road, highway or public ground shall be subject to the right of the proper authorities to control the use, improvement and repair of such street, alley, road, highway or public ground, to the same extent as if such grant had been made, and to make all necessary police regulations concerning the management and operation of such railroad, whether such right is reserved in the grant or not.

NOTE.—See *Village of Madison v. Alton, G. & St. Louis Trac. Co.* 235 Ill. 346.

313. Repeal.

§ 5. That an Act entitled, "An Act in regard to horse and dummy railroads," approved March 19, 1874, and in force July 1, 1874; an Act entitled, "An Act to amend the title and sections one (1) and three (3) of an Act entitled, 'An Act in regard to horse and dummy railroads,'" approved June 9, 1897, and in force July 1, 1897, and all Acts or parts of Acts inconsistent herewith are hereby repealed.

NOTE.—See *Blair v. Chicago*, 201 U. S. 400.

314. Emergency.

§ 6. WHEREAS, The public interests require that this Act take effect immediately, therefore an emergency exists, and this Act shall take effect and be in force from and after its passage.

NOTE.—The following Act is repealed by implication: "An Act to amend an Act entitled, 'An Act to give companies leasing, operating or controlling bridges, connecting cities, towns or villages in this State with cities, towns or villages in adjoining states, power to lease, own, construct and operate street railways over such bridge, and in adjoining counties, and acquire stock in and guarantee bonds of such street railways,' approved June 4, 1897, in force July 1, 1897." [Approved May 11, 1903. In force July 1, 1903.] (Hurd's Revised Statutes, 1913, Ch. 131a, Sec. 7.) This Act is repugnant to the provision of the Public Utilities Commission Law relative to intercorporate relations (Public Utilities Commission Law, Sec. 27) and is inconsistent also with the provisions of the Public Utilities Commission Law pertaining to the creation of indebtedness and the issuance of stocks and bonds (Public Utilities Commission Law, Secs. 20, 21).

XXV. SCREENS OR VESTIBULES FOR MOTORMEN AND CONDUCTORS.

AN ACT to provide screens or vestibules for motormen and conductors on the street railway cars, and for a penalty for violation of this Act. [Approved May 11, 1903. In force July 1, 1903. L. 1903, p. 289; Legal News Ed., p. 274.] (Hurd's Revised Statutes, 1917, Ch. 131a, Secs. 8, 9.)

315. Cars to be Provided with Screen or Vestibule During Certain Months.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every cable, grip, electric, horse or other street car, other than trail cars, which are attached to motor cars, shall be provided during the months of November, December, January, February and March of each year, at both ends with a screen or vestibule constructed of glass or other material, which shall fully and completely protect the driver or motorman or gripman or conductor or other persons stationed on both ends and guiding or directing the motor power by which they are propelled from wind and storm.

316. Penalty.

§ 2. Any person, agent or officer of any association or corporation violating the provisions of this Act shall upon conviction, be fined in any sum not less than \$25 nor more than \$100 for each day each car belonging to and used by any such person, association or corporation is directed or permitted to remain unprovided with the screen required in section 1 of this Act; and it is hereby made the duty of the prosecuting attorney of each county in this State, to institute the necessary proceedings to enforce the provisions of this Act.

XXVI. ELEVATED WAYS AND CONVEYORS.

AN ACT in regard to elevated ways and conveyors. [Approved April 7, 1875. In force July 1, 1875. L. 1875, p. 77.] (Hurd's Revised Statutes, 1917, Ch. 32, Secs. 68-72.)

317. Organization—Articles of Incorporation.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Any company which has been or shall be incorporated under the general laws of this State, for the purpose of constructing, maintaining and operating any elevated way or conveyor, shall state in its articles of incorporation the places from and to which it is intended to construct the proposed elevated way or conveyor. And any such company may organize and become incorporated under the provisions of chapter (32) thirty-two of the Revised Statutes of 1874, concerning corporations for pecuniary profit, and shall be subject to the provisions of the laws of this State applicable to such corporations.

318. Right of Way—How Obtained.

§ 2. If any such corporation shall be unable to agree with the owner for the purchase of any real estate required for the purposes of its incorporation or the transaction of its business, or for its depots, station buildings, engine houses, or for right-of-way, or any other lawful purpose connected with or necessary to the construction, maintenance and operation of said elevated way or conveyor, such corporation may acquire such title in the manner that may be now or hereafter provided for by any law of eminent domain.

319. May Take Material—Compensation.

§ 3. Any such corporation may, by their agents and employees, enter upon and take from any land adjacent to its way, or road, or conveyor, earth gravel, stone or other material, except fuel and wood, necessary for the construction of such elevated way, paying, if the owner of such land and the said corporation can agree thereto, the value of such material taken, and the amount of damage occasioned to any such land or its appurtenances; and if such owner and corporation cannot agree, then the value of such material and the damage occasioned to such real estate shall be ascertained, determined and paid in the manner that may now or hereafter be provided by any law of eminent domain; but the value of such material, and the damages to such real estate, shall be ascertained, determined and paid for before such corporation can enter upon and take the same.

320. Capital Stock—Increase of.

§ 4. In case the capital stock of any such corporation shall be found insufficient for constructing and operating its elevated way or conveyor, such corporation may, with the concurrence of two-thirds, in value, of all its stock, increase its capital stock, from time to time, to any amount required for the purpose aforesaid.

321. Powers of—Restriction.

§ 5. Every corporation formed under this Act shall, in addition to the powers hereinabove conferred, have power—

First—To cause such examination and survey for its proposed elevated way to be made as may be necessary to the selection of the most advantageous route; and for this purpose, by its officers, agents or servants, may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damages which shall be occasioned thereby.

Second—To lay out a strip of land, not exceeding sixty-six feet in width, on which to construct, maintain and operate said elevated way or conveyor; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of the elevated way; to cut down any standing trees that may be in danger of falling upon and injuring such way, making compensation therefor in manner provided by law.

Third—To construct its way across, along or upon any stream of water, water-course, street, highway, plank-road, turnpike, canal or railroad, which the route of such elevated way shall intersect or touch; but such corporation shall restore the stream, water-course, street, highway, plank road, turnpike and railroad thus intersected or touched, to its former state, or to such state as not unnecessarily to have impaired its usefulness, and keep such crossing in repair: *Provided*, that in no case shall any company construct its way without first constructing the necessary culverts and sluices, as the natural lay of the land requires for the necessary drainage thereof.

Nothing in this Act contained shall be construed to authorize the erection of any bridge, or any other obstruction, across or over any stream navigated by steamboats, at the place where any bridge or other obstruction may be proposed to be placed, so as to prevent the navigation of such stream; nor to authorize the construction of any elevated way or conveyor upon or across any street in any city, or incorporated town, or village, without the assent of the corporation of such city, town or village; *Provided*, that in

case of the construction of said elevated way or conveyor along highways, plank roads, turnpikes, canals or railroads, such company shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same, or condemn the same under the provisions of any eminent domain law, now or hereafter in force in the State.

NOTE.—See *Doane v. Lake St. Elevated R. Co.* 165 Ill. 510, Affg. 60 Ill. App. 471.

XXVII. USE OF STREETS, ETC., BY ELEVATED RAILROADS.

AN ACT in regard to the use of streets and alleys in incorporated cities and villages by elevated railroads and elevated ways and conveyors. [Approved June 18, 1883. In force July 1, 1883. L. 1883, p. 126.] (Hurd's Revised Statutes, 1917, Ch. 32, Secs. 73-75.)

322. Petition of Land Owners.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That no person or persons, corporation or corporations, shall construct or maintain any elevated railroad or any elevated way or conveyor to be operated by steam power, or animal power or any other motive power, along any street or alley in any incorporated city or village, except by the permission of the city council or board of trustees of such city or village, granted upon a petition of the owners of the lands representing more than one-half of the frontage of the street or alley, or of so much thereof as is sought to be used for such elevated railroad or elevated way or conveyor; and the city council, or board of trustees, shall have no power to grant permission to use any street or alley, or part thereof, for any of the purposes aforesaid, except upon such petition of land-owners as is herein provided for.

323. When Street More Than One Mile.

§ 2. When the street or alley, or part thereof, sought to be used for any of the purposes aforesaid, shall be more than one mile in extent, no petition of land owners shall be valid for the purposes of this Act, unless the same shall be signed by the owners of the land representing more than one-half of the frontage of each mile and fractional part of a mile, of such street or alley or of the part thereof sought to be used for any of the purposes aforesaid.

324. Repeal.

§ 3. All Acts and parts of Acts inconsistent herewith are hereby repealed.

NOTE.—See *Doane v. Lake St. Elev. R. Co.* 165 Ill. 510, Affg. 60 Ill. App. 471; *Bond v. Pennsylvania Co.*, 171 Ill. 508, Revg. 69 Ill. App. 507; *Pennsylvania Co. v. Bond*, 99 Ill. App. 535 Affd. 202 Ill. 95; See also *Aldrich v. Metropolitan W. Side Elev. R. Co.*, 195 Ill. 456; etc.

AN ACT to fix liability of common carriers receiving property for transportation. [Approved March 27, 1874. In force July 1, 1874.] (Hurd's Revised Statutes, 1917, Ch. 27, Sec. 1.)

325. Common Law Liability of Carrier.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whenever any property is received by a common carrier, to be transported from one place to another, within or without this State, it shall not be lawful for such carrier to limit his common law liability safely to deliver such property at the place to which the same is to be transported, by any stipulation or limitation expressed in the receipt given for such property.

NOTE.—See *Coats v. Chicago, R. I. & P. R. Co.* 144 Ill. App. 81 Revd. 239 Ill. 154; *Ellison v. Adams Exp. Co.* 245 Ill. 410, Revg. 152 Ill. App. 1; *Baltimore & Ohio S. W. R. Co. v. Ross*, 105 Ill. App. 54; etc.

XXVIII. UNIFORM BILLS OF LADING ACT.

AN ACT in regard to bills of lading and to create, define and punish certain criminal offenses in relation thereto. [Approved June 5, 1911. In force July 1, 1911. L. 1911, p. 227.] (Hurd's Revised Statutes, 1917, Ch. 27, Secs. 2-57.)

326. Bills of Lading Issued by Common Carrier.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Bills of lading issued by any common carrier shall be governed by this Act.

NOTE.—See *Gamble-Robinson Comm. Co. v. Delaware, L. & W. R. Co.* 169 Ill. App. 319, etc.

327. What Bill Must Embody.

§ 2. Every bill must embody within its written or printed terms:

- (a) The date of its issue,
- (b) The name of the person from whom the goods have been received,
- (c) The place where the goods have been received,
- (d) The place to which the goods are to be transported,
- (e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person.
- (f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in section 23, and
- (g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section.

NOTE.—See *Shafton Co., v. St. Louis, I. M. & S. Ry. Co.* 174 Ill. App. 121.

328. What Insertions Permitted in Bill.

§ 3. A carrier may insert in a bill issued by him, any other terms and conditions, provided that such terms and conditions shall not—

- (a) Be contrary to law or public policy, or
- (b) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

329. Non-Negotiable or Straight Bill Defined.

§ 4. A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill.

330. Negotiable or Order Bill Defined.

§ 5. A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that it is non-negotiable shall not affect its negotiability within the meaning of this Act.

331. Negotiable Bills Not to be Issued in Parts—Liability.

§ 6. Negotiable bills issued in this State for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets.

If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

332. Negotiable Bill in Duplicate—How Indicated.

§ 7. When more than one negotiable bill is issued in this State for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate," or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by this failure so to do any one who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill.

333. Non-Negotiable Bill—How Marked.

§ 8. A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

334. Insertion of Name of Person to be Notified, No Limitation of Negotiability of Bill.

§ 9. The insertion in a negotiable bill of the name of the person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

335. Objections by Consignor—Form—Unconditional Bill.

§ 10. Except as otherwise provided in this Act, where a consignor receives a bill and makes no objection as hereinafter provided to its terms or conditions, neither the consignor or any person who accepts delivery of the goods or any person who seeks to enforce any provision of the bill shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy: *Provided*, that any objection to the lawful terms and conditions of said bill shall be made in writing, which only need state the mere facts of such objection, by the consignor within three hours after receiving said bill and all such bills shall have attached to the same a blank form for such objection. Thereupon it shall be the duty of the officer, agent or servant of the carrier to take up said bill of lading so objected to and upon request of such officer, agent or servant, it shall be the duty of the consignor to surrender such bill of lading and thereupon such officer, agent or servant shall issue an unconditional bill under which consignor shall pay the lawful freight rate.

336. When Carrier Bound to Deliver Goods.

§ 11. A carrier, in the absence of some lawful excuse, is bound to deliver goods upon the demand made either by the consignee named in the bill for goods or if the bill is negotiable, by the holder thereof, if such demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods,

(b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgement that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

337. When Carrier Justified in Delivering Goods.

§ 12. A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a non-negotiable bill for the goods, or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been endorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee.

338. When Carrier Delivers Goods to One Not Entitled Thereto.

§ 13. Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

339. When Carrier Fails to Take Up Negotiable Bill.

§ 14. Except as provided in section 27, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and in good faith purchases such bill, whether such purchases acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto.

340. When Carrier Delivers Part of Goods.

§ 15. Except as provided in section 27, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

341. Alteration, Addition or Erasure in Bill.

§ 16. Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill, shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

342. Where Negotiable Bill Lost or Destroyed.

§ 17. Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in

its discretion order the payment of the carrier's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

343. Liability for Duplicate Bill.

§ 18. A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

344. Refusal of Carrier to Deliver Goods.

§ 19. No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

345. When More Than One Person Claims Title or Possession of Goods.

§ 20. If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate.

346. Validity of Adverse Claim.

§ 21. If some one other than the consignee or person in possession of the claim has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

347. Right or Title of Third Person No Defense to Action Against Carrier for Failure to Deliver Goods.

§ 22. Except as provided in the two preceding sections and in section 12, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand.

348. Liability of Carrier to Consignee or Holder of Bill—Shipper's Load and Count.

§ 13. If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to:

- (a) The consignee named in a non-negotiable, or
- (b) The holder of a negotiable bill.

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not

make liable the carrier issuing the bill, although the goods are not of the kind or quality or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also, by inserting in the bill the words "shipper's load and count" or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill.

349. Goods Attached by Garnishment or Levied Upon.

§ 24. If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

350. Attachment of Negotiable Bill by Creditor—Injunction, Etc.

§ 25. A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

351. Carrier's Lien Where Negotiable Bill is Issued.

§ 26. If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

352. When Carrier Not Liable for Failure to Deliver Goods.

§ 27. After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable.

353. When Negotiable Bill Negotiated by Delivery.

§ 28. A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

354. When Negotiable Bill Negotiated by Indorsement.

§ 29. A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

355. Transfer of Bill.

§ 30. A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A non-negotiable bill can not be negotiated, and the indorsement of such a bill gives the transferee no additional right.

356. How Negotiable Bill Negotiated by Any Person.

§ 31. A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

357. What Acquired by Person to Whom a Negotiable Bill Has Been Duly Negotiated.

§ 32. A person to whom a negotiable bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

358. What Acquired by Transfer of Bill Not Negotiated.

§ 33. A person to whom a bill has been transferred but not negotiated acquired thereby as against the transfer the title to the goods, subject to the terms of any agreement with the transferer. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferer of the bill immediately before the notification.

Prior to the notification of the carrier by the transferer or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferer, or by a notification to the carrier by the transferer or a subsequent purchaser from the transferer of a subsequent sale of the goods by the transferer.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods.

359. Obligation to Indorse Negotiable Bill Transferred, Etc.

§ 34. Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferer is essential for negotiation, the transferee acquires a right against the transferer to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

360. Person Negotiating or Transferring for Value Warrants What.

§ 35. A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants—

(a) That the bill is genuine,
 (b) That he has a legal right to transfer it,
 (c) That he has knowledge of no fact which would impair the validity or worth of the bill, and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim.

361. Indorser Not Liable for Any Failure of Carrier or Previous Indorser.

§ 36. The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsee of the bill to fulfill their respective obligations.

362. No Warranty by Mortgagee, Pledgee or Holder of Bill for Security.

§ 37. A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described.

363. Validity of Negotiation of Bill, How Impaired.

§ 38. The validity of the negotiation of a bill is not impaired by the fact that such negotiations [negotiation] was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion.

364. Possession of Negotiable Bill for Goods Sold, Mortgaged or Pledged.

§ 39. Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchases of the goods or bill had expressly authorized the subsequent negotiation.

365. Shipment by Consignor Under Contract, Etc.

§ 40. Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the

draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is endorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

366. Where Seller Transmits Draft and Bill—What Buyer Justified in Assuming.

§ 41. Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bills the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order.

367. Rights of Purchaser for Value in Negotiated Bill.

§ 42. Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

368. Rights and Remedies of Mortgagee or Lien Holder.

§ 43. Except as provided in section 42, nothing in this Act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this Act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

369. Issuing Bill for Goods Not Received by Carrier—Penalty.

§ 44. Any officer, agent or servant of a carrier who, with intent to defraud, issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment in the State penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

370. Issuing Bill Knowing It Contains False Statement—Penalty.

§ 45. Any officer, agent or servant of a carrier who, with intent to defraud, issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime and upon conviction shall

be punished for each offense by imprisonment in the State penitentiary not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

371. Fraudulently Issuing Duplicate or Additional Negotiable Bill, Etc.—Penalty.

§ 46. Any officer, agent or servant of a carrier who, with intent to defraud, issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provision of section 7, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment in the State penitentiary not exceeding five years or by a fine not exceeding five thousand dollars, or both.

372. Shipping Goods Mortgaged, Etc., Without Disclosing Title, Etc.—Penalty.

§ 47. Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment in the State penitentiary not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

373. Negotiating or Transferring Bill With Intent to Deceive—Penalty.

§ 48. Any person who, with intent to deceive, negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill are not in possession or control of such carrier, or of a connecting carrier, without disclosing this fact, by causing said fact to be endorsed shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment in the State penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

374. Securing Issue of Bill for Goods Not Received—Penalty.

§ 49. Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carriers control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment in the State penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

375. Issuing Non-Negotiable Bill Without Words "Not Negotiable."

§ 50. Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment in the State penitentiary not exceeding five years or by a fine not exceeding five thousand dollars, or by both.

376. Rules in Cases Not Provided For.

§ 51. In any case not provided for in this Act the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern.

377. Act, How Interpreted and Construed.

§ 52. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

8. Terms Defined.

§ 53.—(1) In this Act, unless the context or subject matter otherwise requires—

“Action” includes counter claim, set-off, and suit in equity.

“Bill” means bill of lading.

“Consignee” means the person named in the bill as the person to whom delivery of the goods is to be made.

“Consignor” means the person named in the bill as the person from whom the goods have been received for shipment.

“Goods” means merchandise or chattels in course of transportation, or which have been or are about to be transported.

“Holder” of a bill means a person who has both actual possession of such bill and a right of property therein.

“Order” means an order by indorsement on the bill.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee and to take as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Value” is any consideration sufficient to support a simple contract, an antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done “in good faith,” within the meaning of this Act, when it is in fact done honestly, whether it be done negligently or not.

9. Not Apply to Bills Delivered Prior to Taking Effect of Act.

§ 54. The provisions of this Act do not apply to bills made and delivered prior to the taking effect thereof.

10. Repeal.

§ 55. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

11. Act How Cited.

§ 56. This Act may be cited as the Uniform Bills of Lading Act.

NOTE.—An Act of the General Assembly entitled, “An Act defining and regulating express companies and carriers by express operating with the State of Illinois, declaring them to be common carriers and placing them under the jurisdiction and control of the Illinois Railroad and Warehouse Commission,” approved June 9, 1911, in force July 1, 1911, is expressly repealed by the Public Utilities Commission Law. (Public Utilities Commission Law, section 81.)

XXIX. UNCLAIMED PROPERTY.

An Act to provide for the sale of personal property by common carriers, warehousemen and innkeepers and by others having lines thereon. [Title as amended May 13, 1879. In force July 1, 1879. L. 1879, p. 317. Original Act in force July 1, 1874.] (Hurd's Revised Statutes, 1917, Ch. 141, Secs. 1-4.)

12. Sale of Unclaimed Property.

SECTION 1. That whenever any trunk, carpet-bag, valise, bundle, package, or article of property, transported, or coming into the possession of any railroad or express company, or any other common carrier, or innkeeper or warehouseman, or private warehouse-keeper, in the course of its or his business as common carrier, innkeeper, warehouseman or private warehouse-keeper, shall remain unclaimed, and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed, and the owner or person to whom the same is consigned cannot be found upon diligent inquiry, or, being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier, innkeeper, warehouseman or private warehouse-keeper to sell such article at public auction, after giving

the owner or consignee fifteen days notice of the time and place of sale, through the postoffice, and by advertising in a newspaper published in the county where such sale is made, and out of the proceeds of such sale to pay all legal charges on such articles, and the overplus if an, shall be paid to the owner or the consignee upon demand. [As amended by Act approved June 18, 1883. In force July 1, 1883. L. 1883, p. 175.]

383. Perishable Property.

§2. Perishable property which has been transported to destination, and the owner, or consignee, notified of its arrival, or being notified, refuses or neglects to receive the same and pay the legal charges thereon, or if upon diligent inquiry the consignee cannot be found, such carrier may, in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds, after deducting the freight and charges and expenses of sale, shall be paid to the owner or consignee upon demand.

384. Sale of Property—Notice.

§ 3. All persons other than common carriers having a lien on personal property, by virtue of an Act entitled "An Act to revise the law of liens," approved March 25, 1874, may enforce said lien by a sale of said property, on giving to the owner thereof, if he and his residence be known to the person having such lien, ten (10) days' notice, in writing, of the time and place of such sale, and if said owner or his place of residence be unknown to the person having such lien, then upon his filing his affidavit to that effect with the clerk of the County Court in the county where said property is situated; notice of said sale may be given by publishing the same once in each week for three (3) successive weeks in some newspaper of general circulation published in said county, and out of the proceeds of said sale all costs and charges for advertising and making the same, and the amount of said lien shall be paid, and the surplus, if any, shall be paid to the owner of said property. [As amended by Act approved May 13, 1879. In force July 1, 1879. L. 1879, p. 317.]

385. Repeal.

§ 4. The Act with above title, approved April 10, 1872, is hereby repealed.

XXX. TELEGRAPH AND TELEPHONE COMPANIES.

AN ACT to revise the law in relation to telegraph companies. [Approved March 24, 1874. In force July 1, 1874.] (Hurd's Revised Statutes, 1917, Ch. 134, Secs. 1-10.)

386. Act Applies to All Telegraph Companies.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every company heretofore incorporated under any general or special law, or which may be incorporated under any general law of this State for the construction or operation of any telegraph line through or in this State, shall possess the powers and privileges and be subject to the duties, restrictions and liabilities prescribed in this Act.

387. Eminent Domain.

§2. Every such company may enter upon any lands for the purpose of making surveys and examinations with a view to the erection of any telegraph line, and take and damage private property for the erection and maintenance of such lines, and may, subject to the provisions contained in this Act, construct lines of telegraph along and upon any railroad, road, highway, street or alley, along or across any of the waters or lands within this State, and may erect poles, posts, pliers or abutments for supporting the insulators, wires and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the rail-

road, highway, street or alley, or interrupt the navigation of such waters. [L. 1849, p. 188, § 5.]

NOTE.—See *Village of London Mills v. White* 208 Ill. 289 Affg. 105 Ill. App. 146; *Illinois Tel. News Co. v. Meine* 242 Ill. 568; *St. Louis & C. R. Co. v. Postal Tel. Co.* 173 Ill. 508; *Western Union Tel. Co. v. Louisville & N. R. Co.* 270 Ill. 399; etc.

388. How Compensation Made.

§ 3. When it shall be necessary, for the construction, alteration or repair of any line of telegraph, to take or damage any property, the same may be done and the compensation therefor ascertained and made in the manner which may be at that time provided by law for the exercise of the right of eminent domain. [L. 1849, p. 188 § 6.]

389. Consent Necessary to Erect Poles on Roads and Streets—Record—Alteration.

§ 4. No such company shall have the right to erect any poles, posts, piers, abutments, wires or other fixtures of their lines along or upon any road, highway, or public ground, outside the corporate limits of a city, town or village, without the consent of the county board of the county in which such road, highway, or public ground is situated; nor upon any street, alley, or other highway or public ground, within any incorporated city, town or village, without the consent of the corporate authorities of such city, town or village. The consent herein required must be in writing, and shall be recorded in the recorder's office of the county. And such county board, or the city council, or board of trustees of such city, town or village, as the case may be, shall have power to direct any alteration in the location or erection of any such poles, posts, piers or abutments, and also in the height of the wires, having first given the company or its agent opportunity to be heard in regard to such alteration.

NOTE.—See *City of Springfield v. Central U. Tel. Co.* 184 Ill. App. 400; *Grannemann v. Meyer* 169 Ill. App. 291; *Interstate Ind. Teleph. & Teleg. Co. v. Town of Towanda* 123 Ill. App. 55, Affd. 221 Ill. 299.

390. Penalty for Injuring Telegraphs.

§ 5. Any person who shall unlawfully, intentionally and maliciously injure, molest or destroy any telegraph line, wire or cable, pole, pier or abutment, or the material or property belonging thereto, or any unauthorized person or persons who shall unlawfully, willfully and maliciously cut, break, tap, or make any connection with any telegraph line, wire, cable, or instrument, or unlawfully, willfully and maliciously copy in any unauthorized manner, any message, either social, business, sporting news or commercial reports passing over it, in this State; or who shall willfully and maliciously prevent, obstruct or delay, by any means or contrivance whatsoever, the sending, conveyance or delivery, in this State, of any authorized communication, by or through any telegraph line, wire, or cable, under the control of any telegraph company doing business in this State; or who shall willfully and maliciously aid, agree with, employ or conspire with any unauthorized person or persons to unlawfully do, or cause to be done, any of the Acts hereinabove mentioned, shall on conviction thereof, be deemed guilty of a misdemeanor and be punished by a fine of not less than \$300 nor more than \$500, or imprisonment in the county jail not exceeding one year, or both, at the discretion of the court having cognizance thereof. Prosecution under this Act shall be by indictment in any court having criminal jurisdiction. [As amended by Act approved June 16, 1891. In force July 1, 1891. L. 1981, p. 205.]

NOTE.—See *Sullivan v. Chicago Bd. of Trade* 111 Ill. App. 492.

391. Refusal to Receive or Transmit Dispatches.

§ 6. If any company or person owning or operating any telegraph line in this State shall refuse to receive any dispatch from any other company or person owning or operating any telegraph line in this State, or shall refuse or willfully neglect to transmit the same in good faith, and without partiality, the company or person so offending shall forfeit all rights and franchises acquired under the laws of this State, and shall forfeit all right

to transact telegraph business in this State, and may be enjoined therefrom by bill of complaint filed in any court of competent jurisdiction, and be liable to pay all damages which shall accrue, by reason of such refusal, to the company or person offering such dispatch for transmission. [L. 1849, p. 189, § 9.]

392. Message Sent in Order of Reception—Revealing Contents—Suppressing Message.

§ 7. It shall be the duty of all persons employed in transmitting messages by telegraph to transmit them in the order in which they are received; and any person who shall fail so to transmit a message, or who shall suppress a message, or who shall make known the contents of a message to any person other than the one to whom it is addressed, or his agent, or who shall wrongfully take from any dispatch to any newspaper any information and send it to any newspaper other than the one to which it is addressed, shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding one thousand dollars (\$1,000). (As amended by Act of June 29, 1917.)

NOTE.—See *Walton v. Western Union Tel. Co.* 189 Ill. App. 606.

393. Disclosure of Contents of Message—Penalty.

§ 7a. Any telegraph company or any officer, agent or employee of a telegraph company which shall disclose or knowingly permit to be disclosed, or shall impart or knowingly permit to be imparted, the contents of any message entrusted to such company for transmission, to any person, firm or corporation other than the person, firm or corporation to which the said message is addressed, shall be deemed guilty of a misdemeanor and upon conviction thereof may be punished by a fine not exceeding one thousand dollars (\$1,000). (Added by Act of June 29, 1917. Laws of 1917, p. 791.)

394. Transmitting Falsehoods.

§ 8. Whosoever shall transmit or cause to be transmitted by telegraph, from any place in this State to any other place in this State or elsewhere, any falsehood, knowing the same to be such, shall be fined in any sum not exceeding \$500. [L. 1861, p. 211, § 1.]

395. Aiding Rebellion, Riot, Etc.

§ 9. Any person who, for the purpose of inciting or aiding rebellion, riot or insurrection in this State against the government or laws of this State or of the United States, or a hostile invasion of this State, shall transmit or cause to be transmitted by telegraph any communication whatever, shall be imprisoned in the penitentiary not exceeding ten years. [2d L. 1861, p. 21, § 2.]

396. Penalty.

§ 10. Any telegraph operator or person employed in any telegraph office in this State, or any other person, who shall, knowing the design thereof, deliver or cause to be delivered any communication prohibited by the preceding section of this Act, to any person other than the proper officers, agents or employees of this State or the United States, shall be subject to indictment, and, on conviction, to the punishment provided in said section. [2d L. 1861, p. 21, § 3.]

XXXI. POWERS, DUTIES AND PROPERTY OF TELEPHONE COMPANIES.

AN ACT relating to the powers, duties and property of telephone companies. [Approved May 16, 1903. In force July 1, 1903. L. 1903, p. 350.] (Hurd's Revised Statutes, 1917, Ch. 134, Secs. 16-20.)

397. Act Applies to All Telephone Companies.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That each corporation heretofore or here-

after having power under its charter, or under any special or general law of the State of Illinois to construct or operate telephone lines or exchanges in or through Illinois, shall possess the powers and privileges and be subject to the duties, restriction and liabilities prescribed in this Act.

398. Acts as to Injuring Property Applies to Telephone Lines.

§ 2. All Acts now or hereafter in force relating to the injuring, molesting or destroying any part or parts of any telegraph line, wire or cable, pole, pier, abutment, or any material or property or effects belonging thereto, and to the cutting, damaging, breaking, tapping, or making any unlawful connection with any telegraph line, wire, cable or instrument, shall apply to such telephone lines and exchanges, with the fines, penalties, judgments and punishment provided in such Acts applicable to telegraph companies or their lines or property.

399. When Lines Erected Over Steam or Electric Railroad—Penalty.

§ 3. Whenever the lines or cables of any such company are erected or constructed over the rails of any steam or electric railroad within the State of Illinois, such company shall maintain such wires or cables not less than twenty-five (25) feet above the surface of the rails. Any failure or refusal so to do shall render such company liable to a fine of not more than fifty dollars (\$50) for each offense, to be recovered upon conviction thereof before any court of competent jurisdiction. All fines collected by virtue of this Act shall be paid into the common school fund of the township in which the offense is committed.

400. Eminent Domain.

§ 4. Every such company may, when it shall be necessary for the construction, maintenance, alteration or extension of its telephone system, or any part thereof, enter upon, take or damage private property in the manner provided for in, and the compensation therefor shall be ascertained and made in conformity to, the provisions of "An Act to revise the law in relation to telegraph companies," approved March 24, 1874, and in force July 1, 1874, and every such companies [company] is authorized to construct, maintain, alter and extend its poles, wires, cables and other appliances as a proper use of highways, along, upon, under and across any highway, street, alley, water or public ground in this State, but so as not to incommode the public in the use thereof: *Provided*, that nothing in this Act shall interfere with the control now vested in cities, incorporated towns and villages in relation to the regulation of the poles, wires, cables and other appliances, and provided, that before any such lines shall be constructed along any such highway it shall be the duty of the telephone company proposing to construct any such line, to give to the highway commissioners having jurisdiction and control over the road or part thereof along and over which such line is proposed to be constructed, notice in writing of the purpose and intention of said company to construct such line over and along said road or highway, which said notice shall be served at least ten days before said line shall be placed or constructed over and along said highway; and upon the giving of said notice it shall be the duty of said highway commissioners to specify the portion of such road or highway upon which the said line may be placed and constructed, and it shall thereupon be the duty of the said company to construct its said line in accordance with such specifications; but in the event that the said highway commissioners shall, for any reason, fail to make such specification within ten days after the service of such notice, then the said company, without such specification having been made, may proceed to place and erect its said line along said highway by placing its posts, poles and abutments so as not to interfere with other proper uses of said road or highway: *Provided*, that such telephone companies shall not have the right to condemn any portion of the right-of-way of any railroad company except as much thereof as is necessary to cross the same.

NOTE.—See *People v. Central U. Tel. Co.* 232 Ill. 260; *Chicago Tel. Co. v. Northwestern Tel. Co.* 199 Ill. 324, Affg. 100 Ill. App. 57.

401. Mortgage Executed by Company—Lien—Recording.

§ 5. Any mortgage or deed of trust which shall hereafter be executed by any telephone company upon its real and personal property in the manner provided for the execution of mortgages upon real estate shall be and constitute a valid lien against the rights and interests of any third persons upon all and every part of the property of said company which is described in said mortgage and which is situated in any county in this State where said deed of trust or mortgage shall be recorded in the manner provided for the recording of mortgages upon real estate; and all mortgages or deeds of trust which have heretofore been executed and recorded in the manner provided by law for the execution and recording of mortgages upon real estate, shall be and constitute valid liens as against the rights and interests of third parties which shall be acquired subsequently to the recording in any county where any property of said corporation may be situate of confirmatory conveyance or assurance: *Provided*, if said original mortgage or deed of trust shall not have been recorded in any county where any property of said company shall be situated, then the recording of the original instrument in such county shall make said deed of trust or mortgage a valid lien as against the rights and interests of third parties acquired subsequently to such recording of said instrument.

NOTE.—See section 20 of the Public Utilities Commission Law, with respect to the creation of indebtedness and the issuance of stocks, stock certificates, bonds and notes. See also section 21 of the Public Utilities Commission Law. *Ante*, 20, 21.

AN ACT to permit the use of public highways, streets and alleys and private roads leading to such highways, streets and alleys outside of incorporated cities, villages and towns, for the purpose of constructing, operating and maintaining private lines of telegraph or telephone, and to prescribe penalties for the injury or obstruction of such lines. [Approved June 18, 1883. In force July 1, 1883. L. 1883, p. 173.] (Hurd's Revised Statutes, 1917, Ch. 134, Secs. 11-13.)

402. Persons Living on Street May Construct Telegraph and Telephone Lines.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That it shall be lawful for any person or persons living on the line of any public highway, street or alley outside of any incorporated city, village or town in this State, or on any private road leading to such highway, street or alley, to construct, operate and maintain a line or lines of telegraph or telephone, extending from house to house, as the parties interested in the construction of such lines, may desire.

403. Poles in Streets.

§ 2. For the purpose of constructing and maintaining such lines of telegraph or telephone, the parties in interest may set the necessary poles or posts on which to place the wires and insulators of such lines, in any of the public streets, highways or alleys, or in any private road leading to such highways, streets or alleys outside of the incorporated cities, villages or towns in this State along which such lines may pass: *Provided*, such poles or posts shall be placed along the boundaries of such highways, streets, or alleys, at such distances therefrom as the authorities having control thereof may direct: *And provided further*, that the wires necessary for such lines shall not be less than fifteen feet above the ground along such boundaries, and not less than twenty feet at any public or private crossing, and shall be so placed as not in any manner to interfere with such crossing.

404. Penalty for Injuring.

§ 3. Any person who shall unlawfully and intentionally injure, molest, or destroy any of said lines or the material or property belonging thereto, or shall in any manner interfere with the proper working of such lines, shall on conviction thereof, be deemed guilty of a misdemeanor and be punished by a fine not exceeding one hundred dollars; said fine to be recoverable in any court having jurisdiction of the same: *Provided*, that prosecution under the foregoing provision of this section shall not in any manner

prevent a recovery by the person or persons entitled thereto, of the amount of damages done to such lines.

AN ACT relating to telegraph, telephone, electric light and other wires, poles and cables. [Approved June 16, 1887. In force July 1, 1887. L. 1887, p. 298.] (Hurd's Revised Statutes, 1917, Ch. 134, Sec. 14.)

405. Poles Attached to Building—No Lapse of Time Raises Presumption of Prescriptive Right.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Whenever any wire, pole or cable used for any telegraph, telephone, electric light or other electric purpose, or for the purpose of communication, is or shall be attached to or does or shall extend upon or over any building or land, no lapse of time whatever shall raise a presumption of any grant of, or justify a prescriptive right to, such attachment or extension.

AN ACT to prevent the wrongful taking of news dispatches from telegraph or telephone wires and to provide a penalty for violation thereof. [Approved June 15, 1895. In force July 1, 1895. L. 1895, p. 157.] (Hurd's Revised Statutes, 1917, Ch. 134, Sec. 15.)

406. Wrongfully Taking News Dispatches—Penalty.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any person who shall within this State wrongfully tap or connect a wire with the telegraph or telephone wires of any person, company association engaged in the transmission of news or telegraph or telephone lines between the states or in this State for the purpose of wrongfully taking or making use of the news dispatches of such person, company or association, or of its customers, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than two thousand (\$2,000) dollars or imprisonment not exceeding one year in the county jail or house of correction, or by both such fine and imprisonment.

AN ACT entitled, "An Act to punish persons for wilful injury to lines, poles and other apparatus used in transmitting or carrying electric current or messages," [Approved June 5, 1909. In force July 1, 1909. L. 1909, p. 177.] (Hurd's Revised Statutes, 1917, Ch. 38, Sec. 185d.)

407. Malicious Injury to Apparatus for Transmitting Electric Current or Messages.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Whoever shall wilfully and maliciously, by the throwing of stones, shooting at, or otherwise break, injure, destroy, or partly break, injure or destroy, any line or lines, pole or poles, electric insulator or insulators, or any other apparatus (used in transmitting or carrying electric current or messages), belonging to any other person or persons, corporation or corporations, or to the State, or any county, city or municipal corporation, shall be fined not exceeding five hundred dollars (\$500) or confined in the county jail not exceeding one year, or both, for each offense.

AN ACT for the assessment of property and for the levy and collection of taxes. [Approved March 30, 1872. In force July 1, 1872.] (Hurd's Revised Statutes, 1917, Ch. 120, Secs. 53, 110.)

TELEGRAPH COMPANIES—RETURN.

408. Tax Schedules.

§ 53. Any person, company or corporation, using or operating a telegraph line in this State, shall, annually, in the month of May, return to the Auditor of Public Accounts a schedule or statement, as follows:

First—The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Second—The amount of capital stock paid up.

Third—The market value, or if no market value, then the actual value of the shares of stock.

Fourth—The total amount of all indebtedness, except current expenses, for operating the line.

Fifth—The length of the line operated in each county, and the total in the State.

Sixth—The total assessed valuation of all its tangible property in this State.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of Public Accounts, and with reference to amounts and values on the first day of May of the year for which the return is made.

409. Capital Stock Assessed—Distribution of Value—Extension of Tax.

§ 110. The aggregate amount of capital stock of railroad or telegraph companies assessed by said board [the State Board of Equalization] shall be distributed proportionately by said board to the several counties in like manner that the property of railroads denominated "railroad track" is distributed. The amount so determined shall be certified by the Auditor to the county clerks of the proper counties. The county clerk shall, in like manner, distribute the value, so certified to him by the Auditor, to the county and to the several towns, districts, villages and cities in his county entitled to a proportionate value of such capital stock. And said clerk shall extend taxes against such values the same as against other property in such towns, districts, villages and cities.

NOTE.—See *Postal Tel. Cable Co. v. Bernard* 37 Ill. App. 105. The State Board of Equalization was abolished by the Act of 1919 creating the State Tax Commission.

XXXII. GAS COMPANIES.

AN ACT to compel gas companies to pay interest on deposits made by parties at the request of such companies. [Approved May 29, 1879. In force July 1, 1879. L. 1879, p. 186.] (Hurd's Revised Statutes, 1917, Ch. 74, Sec. 13.)

410. Gas Companies to Pay on Deposit.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all gas companies, persons or associations engaged in manufacturing gas for public or private use in this State, who shall require any person, corporation or association of persons to deposit any sum or sums of money with such gas company, person or association, so furnishing gas, for any purpose whatever, such company, person or association with whom such money may be deposited shall pay to the party making such deposit, annually, interest on such deposit at the rate of five (5) per cent per annum.

NOTE.—The following Act is repealed by implication: "An Act in relation to gas companies," approved June 5, 1897; in force July 1, 1897. (Hurd's Revised Statutes, 1917, Ch. 32, Secs. 157 to 168, both inclusive.) This Act is repugnant to section 27 of the Public Utilities Commission Law.

411. Frauds.

§ 117. Any person who, with intent to injure or defraud any company, body corporate, copartnership, or individual, shall injure, alter, obstruct or prevent the action of any meter provided for the purpose of measuring and registering the quantity of gas, water or electric current consumed by or at any burner, orifice or place, or supplied to any lamp, motor, machine or appliance, or shall cause or procure or aid the injuring or altering of any such meter or the obstruction or prevention of its action, or shall make or cause to be made with any gas pipe, water pipe or electric conductor any connection so as to conduct or supply illumination or inflammable gas, water or electric current to any burner or orifice or lamp or motor or other

machine or appliance from which such gas, water or electricity may be consumed or utilized without passing through or being registered by a meter or without the consent or acquiescence of the company, municipal corporation, body corporate, copartnership or individual furnishing or transmitting such gas, water or electric current through such gas pipe, water pipe or electrical conductor, shall be punished by imprisonment not exceeding three (3) months or a fine not exceeding two hundred and fifty dollars (\$250) or both. [As amended by Act approved March 24, 1895. In force July 1, 1895. L. 1895, p. 155.]

(Hurd's Revised Statutes, 1917, Ch. 38, Sec. 117.)

WAREHOUSES.

XXXIII. WAREHOUSES.

AN ACT to regulate public warehouses, and the warehousing and inspection of grain, and to give effect to article thirteen of the Constitution of this State. [Approved April 25, 1871. In force July 1, 1871. L. 1871-2, p. 762.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 134-160.)

412. Classified.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That public warehouses, as defined in article 13 of the Constitution of this State, shall be divided into three classes, to be designated as classes A, B and C, respectively.

413. Classes Defined.

§ 2. Public warehouses of class A shall embrace all warehouses, elevators and granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses' elevators or granaries being located in cities having not less than 100,000 inhabitants. Public warehouses of class B shall embrace all other warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together. Public warehouses of class C shall embrace all other warehouses or places where property of any kind is stored for a consideration.

NOTE.—See *Union Trust Co. v. Wilson*, 198 U. S., 530; *Munn v. Illinois* 94 U. S. 113, 24 L. Ed. 77; *Central Elevator Co. v. People* 174 Ill. 203; *People v. Illinois Central E. Co.* 233 Ill. 378; *Yockey v. Smith* 181 Ill. 564; *Hannah v. People* 198 Ill. 77; *People v. Harper* 91 Ill. 357; *Mayer v. Springer* 192 Ill. 270; etc.

414. License.

§ 3. The proprietor, lessee or manager of any public warehouse of class A shall be required, before transacting any business in such warehouse, to procure from the Board of Commissioners of Railroads and Warehouses, a license, permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this State, which license shall be issued by said commissioners upon a written application therefor, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same; or, if the warehouse be owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse of class A in accordance with the laws of this State, and shall be revocable by the said commissioners, after full hearing, upon satisfactory proof of any violation of law by such licensee, such proof to be taken in such manner as may be directed by and under rules to be established by said commissioners, but the action of such commissioners in granting or refusing licenses and in revoking licenses may be reviewed by the circuit court of the county where

such elevator or warehouse is located. [As amended by Act approved May 24, 1907. In force July 1, 1907. L. 1907, p. 491.]

NOTE.—As the jurisdiction of the Board of Railroad and Warehouse Commissioners, in so far as it is not in conflict with the Public Utilities Commission Law, is transferred to the Commission (Public Utilities Commission Law, Sec. 81), the license required by the foregoing section of the Act pertaining to warehouses should be procured from the State Public Utilities Commission. *Ante*, 81.

See *Central Elevator Co. v. People* 174 Ill. 203; *Cantrill v. Stevens* 168 Ill. 165.

415. Bond.

§ 4. The person receiving a license as herein provided, shall file with the Board of Commissioners of Railroads and Warehouses, a bond to the People of the State of Illinois with good and sufficient surety, to be approved by said commissioners, in a penal sum to be fixed by said commissioners, and which shall not be less than ten thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman class A, and his full and unreserved compliance with all the laws of this State in relation thereto. [As amended by Act approved May 24, 1907. In force July 1, 1907. L. 1907, p. 491.]

NOTE.—As the jurisdiction of the Board of Railroad and Warehouse Commissioners, in so far as it is not in conflict with the Public Utilities Commission Law is transferred to the commission (Public Utilities Commission Law Sec. 81), the bond provided for by the foregoing section of the Act pertaining to warehouses should be filed with the Public Utilities Commission. *Ante*, 81.

416. Penalty for Doing Business Without License.

§ 5. Any person who shall transact the business of a public warehouse of class A without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse) shall, on conviction, be fined in a sum not less than one hundred dollars for each and every day such business is so carried on. [As amended by Act approved May 24, 1907. In force July 1, 1907. L. 1907, p. 491.]

417. Not to Discriminate When Grain May be Mixed—Receipts.

§ 6. It shall be the duty of every warehouseman of Class A to receive for storage any grain that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between persons, desiring to avail themselves of warehouse facilities—such grain, in all cases, to be inspected and graded by a duly authorized inspector, and to be stored with grain of a similar grade, received at the same time, as near as may be. In no case shall grain of different grades be mixed together while in store; but if the owner or consignee so requests and the warehouseman consents thereto, his grain of the same grade may be kept in a bin by itself, apart from that of other owners, which bin shall thereupon be marked and known as a "separate bin." If a warehouse receipt be issued for grain so kept separate, it shall state on its face that it is in a separate bin, and shall state the number of such bin; and no grain shall be delivered from such warehouse unless it be inspected on the delivery thereof by a duly authorized inspector of grain. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouse is necessarily closed.

No grain shall be received into any private elevator or warehouse located in cities having a population of not less than 100,000 inhabitants until it shall have been inspected by a duly authorized inspector, and no grain shall be delivered from any such private elevator or warehouse in cars or boats for shipment until it shall have been inspected out by a duly authorized inspector. Any proprietor, lessee or manager of any warehouse or elevator who shall refuse or neglect to cause grain to be inspected as in this section provided, shall, upon conviction be fined in a sum not less than one hundred

dollars for each and every offense. [As amended by Act approved May 24, 1907. In force July 1, 1907. L. 1907, p. 491.]

NOTE.—See section 39 of the Public Utilities Commission Law, with reference to discrimination. *Ante*, 39.

See *Hannah v. People* 198 Ill. 77; *Pontiac v. Langan* 28 Ill. App. 401; *Ardringer v. Wright* 38 Ill. App. 98; etc.

418. Manner of Issuing Receipts.

§ 7. Upon application of the owner or consignee of grain stored in a public warehouse of Class A, the same being accompanied with evidence that all transportation or other charges which may be a lien upon such grain, including charges for inspection, have been paid, the warehouseman shall issue to the person entitled thereto, a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store, to be stored with grain of the same grade by inspection, received at about the date of the receipt, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and the payment of proper charges for storage. All warehouse receipts for grain, issued from the same warehouse, shall be consecutively numbered; and no two receipts, bearing the same number, shall be issued from the same warehouse during any one year, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "duplicate." If the grain was received from railroad cars, the number of each car shall be stated upon the receipt, with the amount it contained; if from canal boat or other vessel, the name of such craft; if from teams or by other means, the manner of its receipt shall be stated on its face.

419. Canceling Receipts.

§ 8. Upon the delivery of grain from store, upon any receipt, such receipt shall be plainly marked across its face with the word "canceled," with the name of the person canceling the same, and shall thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt.

420. Further of Issuing and Canceling Receipts.

§ 9. No warehouse receipt shall be issued, except upon the actual delivery of grain into store, in the warehouse from which it purports to be issued, and which is to be represented by the receipt; nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received; nor shall more than one receipt be issued for the same lot of grain, except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder; but such new receipt shall bear the same date as the original, and shall state on its face that it is balance of receipt of the original number; and the receipt upon which a part has been delivered shall be canceled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consent thereto, the original receipt shall be canceled the same as if the grain had been delivered from store; and the new receipts shall express on the face that they are parts of other receipts, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear upon the new ones issued, as explanatory of the change, but no consolidation of receipts of dates differing more than ten days shall be permitted, and all new receipts issued for old ones canceled, as herein provided, shall bear the same dates as those originally issued, as near as may be.

421. Not to Limit Liability.

§ 10. No warehouseman in this State shall insert in any receipt issued by him, any language in anywise limiting or modifying his liabilities or responsibility, as imposed by the laws of this State.

422. Delivery of Property—Damages—Charges.

§ 11. On the return of any warehouse receipt issued by him, properly indorsed, and the tender of all proper charges upon the property represented by it, such property shall be immediately deliverable to the holder of such receipt, and it shall not be subject to any further charges for storage, after demand for such delivery shall have been made. Unless the property represented by such receipt shall be delivered within two business hours after such demand shall have been made, the warehouseman in default shall be liable to the owner of such receipt for damages for such default, in the sum of one cent per bushel, and in addition thereto, one cent per bushel for each and every day of such neglect or refusal to deliver: *Provided*, no warehouseman shall be held to be in default in delivering if the property is delivered in the order demanded, and as rapidly as due diligence, care and prudence will justify. [See § 135.]

423. Posting Grain in Store—Statement to Registrar—Daily Publication—Canceled Receipts.

§ 12. The warehouseman of every public warehouse of Class A shall, on or before Tuesday morning of each week, cause to be made out, and shall keep posted up in the business office of his warehouse, in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse at the close of business on the previous Saturday; and shall, also, on each Tuesday morning, render a similar statement, made under oath before some officer authorized by law to administer oaths, by one of the principal owners or operators thereof, or by the bookkeeper thereof, having personal knowledge of the facts, to the warehouse registrar appointed as hereinafter provided. They shall also be required to furnish daily, to the same registrar, a correct statement of the amount of each kind and grade of grain received in store in such warehouse on the previous day; also the amount of each kind and grade of grain delivered or shipped by such warehouseman during the previous day, and what warehouse receipts have been canceled, upon which the grain has been delivered on such day, giving the number of each receipt, and amount, kind and grade of grain received and shipped upon each; also, how much grain, if any, was so delivered or shipped, and the kind and grade of it, for which warehouse receipts had not been issued, and when and how such unreceipted grain was received by them; the aggregate of such reported cancellations and delivery of unreceipted grain, corresponding in amount, kind and grade with the amount so reported, delivered or shipped. They shall also, at the same time, report what receipts, if any, have been canceled and new ones issued in their stead, as herein provided for. And the warehouseman making such statements, shall, in addition, furnish the said registrar any further information, regarding receipts issued or canceled, that may be necessary to enable him to keep a full and correct record of all receipts issued and canceled, and of grain received and delivered. [See § 173.]

424. Grades of Grain.

§ 13. Repealed.

425. Appointment of Chief Inspector—Qualifications.

§ 14. (1) It shall be the duty of the Governor to appoint, by and with the advice and consent of the Senate, a suitable person who shall not be a member of the board of trade, and who shall not be interested either directly or indirectly, in any warehouse in this State, a chief inspector of grain for the entire State of Illinois, who shall hold his office for a term of two years unless sooner removed as hereinafter provided; the office of said chief inspector of grain shall be in the city of Chicago.

426. Duty of Chief Inspector.

(2) It shall be the duty of such chief inspector of grain to have a general supervision of the inspection of grain, as required by this Act or laws of this State, under the advice and immediate direction of the Board of Commissioners of Railroads and Warehouses; also, to have general supervision over all deputy inspectors now appointed or hereafter to be appointed.

427. Deputy Inspector.

(3) The said chief inspector shall have the authority to appoint, upon the approval of the Board of Commissioners of Railroads and Warehouses, such suitable persons in sufficient numbers to act as deputy inspectors, who shall not be members of the board of trade nor interested in any warehouse, and also such other employees as may be necessary to properly conduct the business of his office; but no deputy inspector shall be appointed for or assigned to duty in any city or county in which is located one or more elevators of Class B, except upon a request for such action by the county commissioners or board of supervisors of the county in which such warehouse or warehouses are located such request to be made to the Railroad and Warehouse Commissioners and in cities or counties wherein a deputy inspector may be appointed or assigned to duty, no person other than such deputy inspector shall inspect or grade any grain without being liable to the penalties provided in section 20 of this Act.

428. Oath and Bond of Chief Inspector.

(4) The chief inspector of grain shall, upon entering upon the duties of his office be required to take an oath as in cases of other officers, and he shall execute a bond to the People of the State of Illinois, in the penal sum of fifty thousand dollars, with sureties to be approved by the Board of Commissioners of Railroads and Warehouses, with a condition therein that he will faithfully discharge the duties of his said office of chief inspector of grain according to law, and the rules and regulations prescribing his duties; and that he will pay all lawful damages to any person or persons who may be injured by reason of his neglect, refusal or failure to legally comply with the law and the rules and regulations aforesaid.

NOTE.—The jurisdiction of the Board of Railroad and Warehouse Commissioners, in so far as it does not conflict with the Public Utilities Commission Law, is transferred to the Commission (Public Utilities Commission Law, Sec. 81). Wherever, therefore, the words "Board of Commissioners of Railroads and Warehouses" appear in either of the three foregoing paragraphs, read, "State Public Utilities Commission." *Ante*, 81.

429. Deputy Inspector—Oath—Bond.

(5) And each deputy inspector shall take a like oath, and execute a bond in the penal sum of five thousand dollars when appointed with like conditions, and to be approved in like manner as is provided in case of the chief inspector of grain, which said bonds shall be filed in the office of said commissioners; and suit may be brought upon said bond or bonds in any court having jurisdiction thereof, in the county where the plaintiff or defendant resides, for the use of the person or persons injured.

430. Rules for Inspection—Charges.

(6) The chief inspector of grain and all deputy inspectors of grain and other employees in connection therewith, shall be governed in their respective duties by such rules and regulations as may be prescribed by the Board of Commissioners of Railroads and Warehouses; and the said Board of Commissioners shall have full power to make all proper rules and regulations for the inspection of grain, and shall, also, have power to fix the rate of charges for the inspection of grain and the manner in which the same shall be collected, which charges shall be regulated in such manner as will, in the judgment of the commissioners, produce sufficient revenue to meet the necessary expenses of the service of inspection, but the revenues

received from such inspection in any county or city shall in no event be used to pay deficit in any other county or city.

431. Compensation for Inspectors.

(7) It shall be the duty of the Board of Commissioners to fix the amount of compensation to be paid to the chief inspector, deputy inspectors and all other persons employed in the inspection service, and prescribe the time and manner of their payment.

432. Appointment of Warehouse Registrar and Assistants.

(8) The Board of Commissioners of Railroads and Warehouses is hereby authorized to appoint a suitable person as warehouse registrar and such assistants as may be deemed necessary to perform the duties imposed upon such registrar by the provisions of this Act.

433. Board of Commissioners to Exercise General Supervision—Pay.

(9) The said Board of Commissioners shall have and exercise a general supervision and control of such appointees, shall prescribe their respective duties, shall fix the amount of their compensation and the time and manner of its payment.

434. Penalty for Violating Act.

(10) Upon the complaint in writing of any person to the said Board of Commissioners, supported by reasonable and satisfactory proof, that any person appointed or employed under the provisions of this section has violated any of the rules prescribed for his government, has been guilty of any improper official act, or has been found insufficient or incompetent for the duties of his position, such person shall be immediately removed from his office or employment by the same authority that appointed him, and his place shall be filled, if necessary, by a new appointment; or, in case it shall be deemed necessary to reduce the number of persons so appointed or employed, their term of service shall cease under the orders of the same authority by which they were appointed or employed.

NOTE.—The jurisdiction of the Board of Railroad and Warehouse Commissioners, except so far as it conflicts with the Public Utilities Commission Law, is transferred to the Commission (Public Utilities Commission Law, Sec. 81). Wherever, therefore, the words "Board of Commissioners" of Railroads and Warehouses or the words Board of Commissioners" appear in any of the five paragraphs immediately above, read "State Public Utilities Commission." *Ante*, 81.

435. Necessary Expenses of Inspection of Grain.

(11) All necessary expenses incident to the inspection of grain, and to the office of registrar, economically administered, including the rent of suitable offices, shall be deemed expenses of the inspection service and shall be included in the estimate of expenses of such inspection service and shall be paid from the funds collected for the same. [As amended by Act approved May 24, 1907. In force July 1, 1907. L. 1907, p. 491.]

NOTE.—See *Bd. of Trade of Chicago v. Cowen* 252 Ill. 554. Section 15 of the Act regulating warehouses and the inspection of grain is superseded by the provisions of the Public Utilities Commission Law relative to the filing, publication and posting of schedule of rates. See Public Utilities Commission Law, Secs. 33, 34, 35. *Ante*, 33, 34 35. The offices of chief inspector of grain, deputy grain inspectors, deputy chief inspector of grain of East St. Louis district, warehouse registrar, assistant warehouse registrars are abolished. See *Ante* 55. The rights, powers and duties of these officers are transferred to the Department of Trade and Commerce.

436. Loss by Fire—Heating—Order of Delivery—Grain Out of Condition.

§ 16. No public warehouseman shall be held responsible for any loss or damage to property by fire, while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same; nor shall he be held liable for damage to grain by heating, if it can be shown that he has exercised proper care in handling and storing the same, and that such heating or damage was the result of causes beyond his control; and, in order that no injustice may result to the holder of grain in any public warehouse of classes A or B, it shall be deemed the duty of such warehouse-

man to dispose of, by delivery or shipping, in the ordinary and legal manner of so delivering, that grain of any particular grade which was first received by them, or which has been for the longest time in store in his warehouse; and, unless public notice has been given that some portion of the grain in his warehouse is out of condition, or becoming so, such warehouseman shall deliver grain of quality equal to that received by him, on all receipts as presented. In case, however, any warehouseman of classes A or B shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice, by advertisement in a daily newspaper in the city in which such warehouse is situated, and by posting a notice in the most public place (for such a purpose) in such city, of its actual condition, as near as he can ascertain it; shall state in such notice the kind and grade of the grain, and the bins in which it is stored; and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amounts and dates of each— which receipts shall be those of the oldest dates then in circulation or uncanceled, the grain represented by which has not previously been declared or receipted for as out of condition, or if the grain longest in store has not been receipted for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it; and the enumeration of receipts and identification of grain so discredited shall embrace, as near as may be, as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon the return and cancellation of the receipts, and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act or neglect, the effect of which is to depreciate property stored in the warehouse under his control, shall be held responsible as at common law, or upon the bond of such warehouseman, and in addition thereto the license of such warehouseman, if his warehouse be of class A, shall be revoked. Nothing in this section shall be so construed as to permit any warehouseman to deliver any grain stored in a special bin, or by itself, as provided in this Act, to any but the owner of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition, as herein provided for, shall [not] be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice, by advertisement in a newspaper (daily, if there be such), published in the city or town where such warehouse is located.

437. Tampering With Grain Stored—Private Bins—Drying, Cleaning, Moving.

§ 17. It shall not be lawful for any public warehouseman to mix any grain of different grades together, or to select different qualities of the same grade for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain while in his possession or custody, with a view of securing any profit to himself or any other person; and in no case, even of grain stored in a separate bin, shall he be permitted to mix grain of different grades together while in store. He may, however, on request of the owner of any grain stored in a private bin, be permitted to dry, clean, or otherwise improve the condition or value of any such lot of grain; but in such case it shall only be delivered as such separate lot, or as the grade it was originally when received by him without reference to the grade it may be as improved by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse for its preservation or safe keeping.

438. Examination of Grain and Scales—Incorrect Scales.

§ 18. All persons owning property, or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property, shall at all times, during ordinary business hours, be at full liberty to examine any and all property stored in any public warehouse in this State, and all proper facilities shall be extended to such person by the warehouseman, his agents and servants, for an examination; and all parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or of any authorized inspector of such property. And all scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector or sealer of weights and measures, at any time when required by any person or persons, agent or agents, whose property has been or is to be weighted on such scales—the expenses of such test by an inspector or sealer to be paid by the warehouse proprietor if the scales are found incorrect, but not otherwise. Any warehouseman who may be guilty of continuing to use scales found to be in an imperfect or incorrect condition by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be liable to be proceeded against as hereinafter provided.

439. Grain Must be Inspected.

§ 19. In all places where there are legally appointed inspectors of grain, no proprietor or manager of a public warehouse of class B shall be permitted to receive any grain and mix the same with the grain of other owners, in the storage thereof, until the same shall have been inspected and graded by such inspector.

440. Assuming to Act as Inspector—Misconduct of Inspector—Influencing.

§ 20. Any person who shall assume to act as an inspector of grain, who has not first been so appointed and sworn, shall be held to be an imposter, and shall be punished by a fine of not less than \$50 nor more than \$100 for each and every attempt to so inspect grain, to be recovered before a justice of the peace.

Any duly authorized inspector of grain who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty, or the improper performance of any duty as such inspector of grain; and any person who shall improperly influence any inspector of grain in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than \$100 nor more than \$1,000, in the discretion of the court, or shall be imprisoned in the county jail not less than three nor more than twelve months, or both, in the discretion of the court.

441. Owner, Etc., Dissatisfied with Inspection—His Rights.

§ 21. In case any owner or consignee of grain shall be dissatisfied with the inspection of any lot of grain, or shall, from any cause, desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into any public warehouse (whether the property may have previously been consigned to such warehouse or not), by giving notice to the person or corporation in whose possession it may be at the time of giving such notice; and such grain shall be withheld from going into store, and be delivered to him, subject only to such proper charges as may be a lien upon it prior to such notice. The grain, if in railroad cars, to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession: *Provided*, such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to so receive his grain shall be deemed guilty of conversion, and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such

grain is not to be delivered into store may also be given to the proprietor or manager of any warehouse into which it would otherwise have been delivered, and if, after such notice, it be taken into store in such warehouse, the proprietor or manager of such warehouse shall be liable to the owner of such grain for double its market value.

442. Combination—Wrongful Storage.

§ 22. It shall be unlawful for any proprietor, lessee or manager of any public warehouse, to enter into any contract, agreement, understanding, or combination, with any railroad company or other corporation, or with any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or for any other purpose, contrary to the direction of the owner, his agent, or consignee. Any violation of this section shall subject the offender to be proceeded against as provided in section 23 of this Act.

443. Suits on Bond—Prosecutions.

§ 23. If any warehouseman of class A shall be guilty of a violation of any of the provisions of this Act, it shall be lawful for any person injured by such violation to bring suit in any court of competent jurisdiction, upon the bond of such warehouseman, in the name of the People of the State of Illinois, to the use of such person. In all criminal prosecutions against a warehouseman, for the violation of any of the provisions of this Act, it shall be the duty of the prosecuting attorney of the county in which such prosecution is brought, to prosecute the same to a final issue, in the name of and on behalf of the People of the State of Illinois.

444. Warehouse Receipts Assignable.

§ 24. Warehouse receipts for property stored in any class of public warehouses, as herein described, shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another.

NOTE.—Section 60 of "An Act in regard to warehouse receipts," approved May 29, 1907, in force July 1, 1907, (Hurd's Revised Statutes, 1917, Ch. 114, Sec. 300) expressly saves from repeal the Act regulating public warehouses and the inspection of grain, "except in so far as said last-named Act relates to warehouse receipts for property stored in public warehouses of Class C." Section 24, above, of the Act to regulate warehouses and the inspection of grain, contains the following sentence: "All warehouse receipts for property stored in public warehouses of Class C shall distinctly state on their face the brand or distinguishing marks upon such property." (Hurd's Revised Statutes, 1917, Ch. 114, Sec. 156.) This sentence is within the exception and is therefore repealed.

See *Canadian Bank of Commerce v. McCrea* 106 Ill. 281; *Broadwell v. Howard* 77 Ill. 305; etc.

445. False Receipts—Fraudulent Removal.

§ 25. Any warehouseman or any public warehouse who shall be guilty of issuing any warehouse receipt for any property not actually in store at the time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality, or inspected grade of such property, or who shall remove any property from store (except to preserve it from fire or other sudden danger), without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be deemed guilty of a crime, and shall suffer, in addition to any other penalties prescribed by this Act, imprisonment in the penitentiary for not less than one year, and not more than ten years. [Restricted as to receipts issued before October 8, 1871. L. 1871-2, p. 774.]

NOTE.—See *Sykes v. People* 127 Ill. 117; *Mc Reynolds v. People* 230 Ill. 623; etc.

446. Common Law Remedy Saved.

§ 26. Nothing in this Act shall deprive any person of any common law remedy now existing.

447. Printed Copy of Act Posted.

§ 27. All proprietors or managers of public warehouses shall keep posted up at all times, in a conspicuous place in their business offices, and in each of their warehouses, a printed copy of this Act.

448. Repeal.

§ 28: All Acts or parts of Acts inconsistent with this Act are hereby repealed.

AN ACT to amend an Act entitled, "An Act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to article thirteen (13) of the Constitution of the State," approved April 25, 1871, in force July 1, 1871, and to establish a committee of appeal, and prescribe their duties. [Approved April 15, 1873. In force July 1, 1873.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 161-166.)

449. Commissioners to Establish Grades.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the Board of Railroad and Warehouse Commissioners shall establish a proper number and standard of grades for the inspection of grain, and may alter or change the same from time to time: *Provided*, no modification or change of grades shall be made, or any new ones established, without public notice being given of such contemplated change, for at least twenty days prior thereto, by publication in three daily newspapers printed in each city containing warehouses of Class A: *And, provided, further*, that no mixture of old and new grades, even though designated by the same name or distinction, shall be permitted while in store.

NOTE.—The jurisdiction of the Board of Railroad and Warehouse Commissioners, in so far as it does not conflict with the Public Utilities Commission Law, is transferred to the Commission (Public Utilities Commission Law, Sec. 81). Wherever, therefore in the six sections of the statute immediately following, the words "Board of Railroad and Warehouse Commissioners," or "Commissioners," or "Board of Commissioners" appear, read "State Public Utilities Commission." *Ante*, 81.

450. Committee of Appeals.

§ 2. Within twenty days after this Act takes effect, the Board of Railroad and Warehouse Commissioners shall appoint three discreet and competent persons to act as a committee of appeals, in every city wherein is located a warehouse of Class A, who shall hold their office for one year and until their successors are appointed. And every year thereafter a like committee of appeals shall be appointed by said commissioners, who shall hold their office for one year and until their successors are appointed: *Provided*, said commissioners shall have power, in their discretion, to remove from office any member of said committee at any time, and fill vacancies thus created by the appointment of other discreet persons.

451. Appeals—Notice.

§ 3. In all matters involving doubt on the part of the chief inspector, or any deputy inspector, as to the proper inspection of any lot of grain, or in case any owner, consignee or shipper of grain, or any warehouse manager, shall be dissatisfied with the decision of the chief inspector or any deputy inspector, an appeal may be made to said committee of appeal, and the decision of a majority of said committee shall be final. Said Board of Commissioners are authorized to make all necessary rules governing the manner of appeals as herein provided. And all complaints in regard to the inspection of grain, and all notices requiring the services of the committee of appeals, may be served on said committee, or may be filed with the warehouse registrar of said city, who shall immediately notify said committee of the fact and who shall furnish said committee with such clerical assistance as may be necessary for the proper discharge of their duties. It shall be the duty of said committee, on receiving such notice, to immediately act on and render a decision in each case. [As amended by Act approved June 4, 1907. In force July 1, 1907. L. 1907, p. 490.]

452. Committee on Appeals—Oath—Bond—Who May Serve.

§ 4. The said committee of appeals shall, before entering upon the duties of their office, take an oath, as in case of other inspectors of grain, and shall execute a bond in the penal sum of five thousand dollars; with like conditions as is provided in the case of other inspectors of grain, which said bonds shall be subject to the approval of the Board of Railroad and Warehouse Commissioners: *It is further provided*, that the salaries of said committee of appeals shall be fixed by the Board of Railroad and Warehouse Commissioners, and be paid from the inspection fund, or by the party taking the appeal, under such rules as the Commission shall prescribe; and all necessary expenses incurred in carrying out the provisions of this Act, except as herein otherwise provided, shall be paid out of the funds collected for the inspection service upon the order of the commissioners: *Provided, that no person shall be appointed to serve on the committee of appeals who is a purchaser of, or a receiver of grain, or other articles to be passed upon by said committee.* [As amended by Act approved June 26, 1885. In force July 1, 1885. L. 1885, p. 179.]

453. "Registered for Collection"—Inspection Fees.

§ 5. No grain shall be delivered from store from any warehouse of Class A, for which or representing which warehouse receipts shall have been issued, except upon the return of such receipts stamped or otherwise plainly marked by the warehouse register with the words "registered for collection" and the date thereof; and said Board of Commissioners shall have power to fix the rates of charges for the inspection of grain, both into and out of warehouse; which charges shall be a lien upon all grain so inspected, and may be collected of the owners, receivers or shippers of such grain, in such manner as the said commissioners may prescribe.

454. Repeal.

§ 6. Section 13 of the Act to which this is an amendment is hereby repealed: *Provided*, the provisions contained in said section shall remain in force until the grades for the inspection of grain shall have been established by the commissioners, as provided in section 1 of this Act. [Grades fixed by commissioners, July 1, 1873.]

NOTE.—An Act of the General Assembly entitled, "An Act to establish a board of railroad and warehouse commissioners and prescribe their powers and duties," approved April 13, 1871; in force July 1, 1871, is expressly repealed by the Public Utilities Commission Law. (Public Utilities Commission Law, section 81.) *Ante*, 81. And "An Act to provide that the Railroad and Warehouse Commission may keep and use a common seal for the authentication of its Acts, records and proceedings," approved June 19, 1891; in force July 1, 1891, (Hurd's Revised Statutes, 1917, Ch. 114, Sec. 185½) is repealed by implication, as it is superseded by section 6 of the Public Utilities Commission Law. *Ante*, 6.

XXXIV. STATE WEIGH-MASTERS.

AN ACT to provide for the appointment of State weigh-masters. [Approved June 23, 1883. In force July 1, 1883. L. 1883, p. 172.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 186-191.)

455. Weigh-Master—Appointment of.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That there shall be appointed by the Railroad and Warehouse Commissioners in all cities where there is State inspection of grain, a State weigh-master and such assistants as shall be necessary.

NOTE.—The jurisdiction of the Board of Railroad and Warehouse Commissioners, in so far as it does not conflict with the Public Utilities Commission Law, is transferred to the Commission (Public Utilities Commission Law, Sec. 81). Wherever, therefore, in the six sections of the statute immediately following the words "Board of Railroad and Warehouse Commissioners" or "Railroad and Warehouse Commissioners" appear, read "State Public Utilities Commission." *Ante*, 81.

456. Duties of.

§ 2. Said State weigh-master and assistants shall, at the places aforesaid supervise and have exclusive control of the weighing of grain and other property which may be subject to inspection, and the inspection of scales and the action and certificate of such weigh-master and assistants in the discharge of their aforesaid duties shall be conclusive upon all parties in interest.

457. Fees for Weighing.

§ 3. The Board of Railroad and Warehouse Commissioners shall fix the fees to be paid for the weighing of grain or other property, which fees shall be paid equally by all parties interested in the purchase and sale of the property weighed, or scales inspected and tested.

458. Weigh-Master—Qualifications—Bond—Compensation.

§ 4. Said State weigh-master and assistants shall not be a member of any board of trade or association of like character; they shall give bonds in the sum of five thousand dollars (\$5,000) conditioned for the faithful discharge of their duties, and shall receive such compensation as the Board of Railroad and Warehouse Commissioners shall determine.

459. May Adopt Rules for Weighing.

§ 5. The Railroad and Warehouse Commissioners shall adopt such rules and regulations for the weighing of grain and other property as they shall deem proper.

460. Neglect of Duty—Penalty.

§ 6. In case any person, warehouseman or railroad corporation, or any of their agents or employees, shall refuse or prevent the aforesaid State weigh-master or either of his assistants from having access to their scales, in the regular performance of their duties in supervising the weighing of any grain or other property in accordance with the tenor and meaning of this Act they shall forfeit the sum of one hundred dollars (\$100) for each offense, to be recovered in an action of debt, before any justice of the peace, in the name of the People of the State of Illinois; such penalty or forfeiture to be paid to the county in which the suit is brought, and shall also be required to pay all costs of prosecution.

XXXV. WAREHOUSE RECEIPTS.

AN ACT in regard to warehouse receipts. [Approved May 29, 1907. In force July 1, 1907. L. 1907, p. 477.] (Hurd's Revised Statutes, 1917, Ch. 114, Secs. 241-300.)

ARTICLE I.

THE ISSUE OF WAREHOUSE RECEIPTS.

461. Issue of.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Warehouse receipts may be issued by any warehouseman.

462. Form—Requisites.

§ 2. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

- (a) The location of the warehouse where the goods are stored.
- (b) The date of issue of the receipt.
- (c) The consecutive number of the receipt.

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

- (e) The rate of storage charges.

(f) A description of the goods or of the packages containing them.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of the terms herein required.

463. Terms and Conditions.

§ 3. A warehouseman may insert in a receipt, issued by him, any other terms and conditions: *Provided*, that such terms and conditions shall not:

(a) Be contrary to the provisions of this Act.

(b) In any wise impair his obligation to exercise that degree of care a careful man would exercise in regard to similar goods of his own.

464. Non-Negotiable Receipt.

§ 4. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

465. Negotiable Receipts.

§ 5. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

466. Duplicate Negotiable Receipt to be Marked—Liability Where Not Marked.

§ 6. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be the original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

467. Non-Negotiable Receipt to be Marked—Liabilities.

§ 7. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

ARTICLE II.

OBLIGATIONS AND RIGHTS OF WAREHOUSEMAN UPON THEIR RECEIPTS.

468. Delivery of Goods on Demand.

§ 8. A warehouseman, in the absence of some lawful excuse provided by this Act is bound to deliver the goods upon demand made either by the

holder of a receipt for the goods or by the depositor, if such demand accompanied with—

- (a) An offer to satisfy the warehouseman's lien.
- (b) An offer to surrender the receipt properly endorsed.
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

469. When Justified in Delivering Goods.

§ 9. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

- (a) The person lawfully entitled to the possession of the goods, or his agent.
- (b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper, or
- (c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

470. When Warehouseman Liable for Conversion.

§ 10. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than is authorized by subdivisions (b) and (c) of the preceding sections and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either—

- (a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or
- (b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

471. Delivery of Goods, Failure to Cancel Negotiable Receipt.

§ 11. Except as provided in section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

472. Delivery of Part of Goods, Failure to Cancel.

§ 12. Except as provided in section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

473. Alteration of Receipt—Effect.

§ 13. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was:

- (a) Immaterial.

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

474. Where Receipt Lost or Destroyed—Proceedings in Court.

§ 14. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

475. "Duplicate" Receipt, Warranty.

§ 15. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

476. When Warehouseman May Claim Title, Etc.

§ 16. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

477. Where Several Claim Title.

§ 17. If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, which ever is appropriate, require all known claimants to interplead.

478. Where Adverse Claims.

§ 18. If some one other than the depositor or person claiming under him as a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the diverse claim or to bring legal proceedings to compel all claimants to interplead.

479. Right and Title of Third Person No Defense—Exception.

§ 19. Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

480. Liability for Damages Caused by Non-Existence of Goods, Etc.

§ 20. A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

481. Liability for Loss or Injury to Goods.

§ 21. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

482. Goods to be Kept Separate.

§ 22. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and re-delivery of the goods deposited.

483. May Mingle Fungible Goods—Rights of Depositors.

§ 23. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

484. Liability for Delivery of Share of Such Mass.

§ 24. The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

485. Cannot be Attached, Etc., Unless Receipt First Surrendered.

§ 25. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

486. Creditor May Attach Receipt, Etc.

§ 26. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by

means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

487. Lien of Warehouseman.

§ 27. Subject to the provisions of section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperating and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

488. Enforcement of Lien.

§ 28. Subject to the provisions of section 30, a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

489. Lien, How Lost.

§ 29. A warehouseman loses his lien upon the goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this Act.

490. Negotiable Receipt—Charges for Storage—Lien.

§ 30. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 27, although the amount of the charges so enumerated is not stated in the receipt.

491. May Refuse to Deliver Until Lien Satisfied.

§ 31. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

492. Entitled to Creditor's Remedies.

§ 32. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

493. How Lien for Claim Which Has Become Due May be Satisfied.

§ 33. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place. In accordance with the terms of a notice so given a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the warehouse where the lien was acquired, or, at the election of said warehouseman at any public auction room or place in the county where such warehouseman is located. After the time for the payment of the claims specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this Act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

494. Where Goods are of a Perishable Nature, Etc.

§ 34. If goods are a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the proceeding section.

495. Remedy Provided Not to Preclude Others.

§ 35. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the ware-

warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

496. After Goods Lawfully Sold to Satisfy Lien—Warehouseman's Liability.

§ 36. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods or to a holder of the receipt, given for the goods when they were deposited, even if such receipt be negotiable.

ARTICLE III.

NEGOTIATION AND TRANSFER OF RECEIPTS.

497. Negotiable Receipt Negotiated by Delivery.

§ 37. A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or subsequent indorsee of the receipt has endorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

498. Negotiation by Indorsement.

§ 38. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

499. Non-Negotiable Receipt—Transfer.

§ 39. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the endorsement of such a receipt, gives the transferee no additional right.

500. Negotiable Receipt, May be Negotiated by Whom.

§ 40. A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

501. What Rights Acquired by Negotiation.

§ 41. A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

502. Where Receipt Has Been Transferred, What Acquired.

§ 42. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods subject to the terms of any agreement with the transferor. If the receipt is non-negotiable such person also acquires the right to notify the warehouseman in writing of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the written notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor or by notification in writing to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

503. Transferee May Compel Indorsement.

§ 43. Where a negotiable receipt is transferred for value by delivery and the indorsement of the transferor is essential for negotiation, the transferee acquires the right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

504. Warranties by Negotiator of Receipt.

§ 44. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

- (a) That the receipt is genuine.
- (b) That he has a legal right to negotiate or transfer it.
- (c) That he had knowledge of no fact which would impair the validity or worth of the receipt, and
- (d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

505. Indorser Not Liable for Prior Defaults.

§ 45. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

506. Pledgee in Collecting Not a Warrantor.

§ 46. A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

507. Validity Not Impaired by Unauthorized Negotiation, When—Notice.

§ 47. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

508. Possession of Receipt Validates Subsequent Transfers.

§ 48. Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

509. Stoppage in Transitu.

§ 49. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage *in transitu* shall defeat the rights of the purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage *in transitu*. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

ARTICLE IV.**CRIMINAL OFFENSES.****510. Issuing Receipt for Goods Not Actually Received—Penalty.**

§ 50. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

511. Issuing Receipt Containing False Statement—Penalty.

§ 51. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

512. Issuing Duplicate Receipt Without Marking Same—Penalty.

§ 52. A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or a fine not exceeding five thousand dollars, or by both.

513. Issuing Receipt Without Stating Joint Ownership—Penalty.

§ 53. Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not

exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

514. Delivering Goods Where Negotiable Receipt Outstanding—Penalty.

§ 54. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in section 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

515. Depositing Goods and Taking Negotiable Receipt Where Party Has No Title—Penalty.

§ 55. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.

ARTICLE V.

INTERPRETATION.

516. What Rules Govern Interpretation.

§ 56. In any case not provided for in this Act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

517. How Interpreted and Construed.

§ 57. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

518. Definitions.

§ 58. (1) In this Act, unless the context or subject matter otherwise requires—

“Action” includes counter claim set off, and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature, or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder” of a receipt means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

“To purchase” includes to take as mortgagee or a pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this Act, when it is in fact done honestly, whether it be done negligently or not.

519. Application of Act.

§ 59. The provisions of this Act do not apply to receipts made and delivered prior to the taking effect of this Act.

520. Repeal.

§ 60. All Acts or parts of Acts inconsistent with this Act are hereby repealed: *Provided, however*, that nothing in this Act shall be construed to repeal any of the provisions of an Act entitled, "An Act to regulate public warehouses and the warehousing and inspection of grain and to give effect to article thirteen of the Constitution of this State," (approved April 25, 1871, in force July 1, 1871), except in so far as said last named Act relates to warehouse receipts for property stored in public warehouses of Class C, or to repeal the provisions of an Act entitled, "An Act providing for the issuing and the cancellation of receipts for public warehouses or warehouses of Class A or Class B in the State of Illinois, and providing penalties for violation thereof," (approved May 11, 1901, in force July 1, 1901.)

XXXVI. ISSUANCE AND CANCELLATION OF RECEIPTS.

AN ACT providing for the issuing and the cancellation of receipts for public warehouses or warehouses of Class A or Class B, in the State of Illinois, and providing penalties for violation thereof. [Approved May 11, 1901. In force July 1, 1901. L. 1901, p. 320.] (Hurd's Revised Statutes, 1917, Ch. 114, Sec. 160a.)

521. Warehouse Receipt—When to Issue—What to Contain—To be Stamped and Marked—Penalties.

SECTION 1. That upon the receipt of any grain for storage in any public warehouse of Class A or Class B (in cities or counties where a chief grain inspector or deputy inspector has or shall be lawfully appointed), the said warehouseman shall issue or cause to be issued a receipt for the number of bushels, the kind, the grade of such grain, the owner thereof, and shall report within twenty-four (24) hours to the warehouse registrar the amount of said grain, the owner thereof, the number of the receipt issued therefor, the kind and grade of said grain; and that no grain shall be delivered from store from any such public warehouse of Class A or Class B (in cities or counties where a chief grain inspector or deputy inspector has or shall be lawfully appointed), for which, or representing which, any such receipt shall have been issued, except upon the return of said receipt stamped, or otherwise plainly marked by the warehouse registrar with the words, "registered for cancellation," and the date thereof. And it shall be the duty of the warehouseman, after said receipts have been stamped and marked "registered for cancellation," and within twenty-four (24) hours after the last of said grain has been delivered, to report said receipts to the registrar canceled; and any warehouseman, agent, clerk or servant failing to issue receipts for grain, when received as aforesaid, shall be subject to a fine of one hundred dollars (\$100) for each offense. And any warehouseman, agent, clerk or servant so delivering any grain, where receipts have been issued as aforesaid, or inspector or person connected with the grain department, knowingly permitting said grain to be delivered without notice from the registrar that said receipts have been registered for cancellation, shall be deemed guilty of a crime, and upon conviction thereof shall be fined an amount equal to the value of the property so delivered, or imprisonment in the penitentiary not less than one year nor more than ten years. [As amended by Act approved June 4, 1907. In force July 1, 1907. L. 1907, p. 489.]

NOTE.—This Act is expressly saved from repeal by virtue of section 60 of "An Act in regard to warehouse receipts," approved May 29, 1907; in force July 1, 1907. See Hurd's Revised Statutes, 1917, Ch. 114, section 300.

XXXVII. UNIFORM COLD STORAGE ACT.

AN ACT to regulate cold storage of certain articles of food. (Approved June 28, 1917.)

522. "Cold Storage" Defined, Etc.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* For the purpose of this Act, "cold storage" shall mean the storage or keeping of articles of food at or below a temperature above zero of 45 degrees Fahrenheit in a cold storage warehouse; "cold storage warehouse" shall mean any place artificially cooled to or below a temperature above zero of 45 degrees Fahrenheit, in which articles of food are placed and held for thirty days or more; "article of food" shall mean fresh meat and fresh meat products and all fish, game, poultry, eggs and butter.

523. License—Penalty for Operating Without.

§ 2. No person, firm or corporation shall maintain or operate a cold storage warehouse without a license so to do issued by the Department of Agriculture. Any person, firm or corporation desiring such a license shall make written application to the Department of Agriculture for that purpose, stating the location of the warehouse. The Department of Agriculture thereupon shall cause an examination to be made of said warehouse and, if it be found by him to be in a proper sanitary condition and otherwise properly equipped for its intended use, he shall issue a license authorizing the applicant to operate the same as a cold storage warehouse during one year. The license shall be issued upon payment of the applicant of a license fee of \$25.00 per annum to the Department of Agriculture.

524. License Revoked for Unsanitary Condition.

§ 3. In case any cold storage warehouse, or any part thereof, shall at any time be deemed by the Department of Agriculture, to be in an unsanitary condition, or not properly equipped for its intended use, he shall notify the licensee of such condition and upon the failure of the licensee to put such cold storage warehouse in a sanitary condition or to properly equip the same for its intended use, within a time to be designated by the Department of Agriculture, he shall revoke such license.

525. Records—Reports, Etc.

§ 4. Every such licensee shall keep accurate records of the articles of food received in and the articles of food withdrawn from his cold storage warehouse, and the Department of Agriculture shall have free access to such records at any time. Every such licensee shall submit a monthly report to the Department of Agriculture, setting forth in itemized particulars the quantities and kinds of articles of food in cold storage warehouse. Such monthly reports shall be filed on or before the fifth day of each month, and the reports so rendered shall show the conditions existing on the last day of the preceding month reported and a summary of such reports shall be prepared by the Department of Agriculture and shall be open to public inspection on or before the tenth day of each month.

526. Inspection and Supervision.

§ 5. The Department of Agriculture shall inspect and supervise all cold storage warehouses and make such inspection of articles of food therein as he may deem necessary to secure the proper enforcement of this Act, and shall have access to all cold storage warehouses at all reasonable times. The Department of Agriculture may appoint such persons as he deems qualified to make any inspection under this Act.

527. Diseased or Tainted Food Not to be Stored.

§ 6. No article of food intended for human consumption shall be placed, knowingly, received or kept in any cold storage warehouse, if diseased, tainted, otherwise unfit for human consumption, or in such con-

dition that it will not keep wholesome for human consumption. No article of food, for use other than for human consumption, shall be placed, received or kept in any cold storage warehouse unless previously marked, in accordance with forms to be prescribed by the Department of Agriculture, in such a way as to indicate plainly the fact that such article of food is not to be sold or used for human food.

528. Food Container Must be Stamped With Date of Storage and Removal.

§ 7. No person, firm or corporation shall place, receive or keep in any cold storage warehouse in this State articles of food unless the same shall be plainly marked, stamped or tagged, either upon the container in which they are packed, or upon the article of food itself, with the date when placed therein; and no person, firm or corporation shall remove, or allow to be removed, such article of food from any cold storage warehouse unless the same shall be plainly marked, stamped or tagged, either on the container in which it is enclosed or upon the article of food itself, with the date of such removal, and such marks, stamps and tags shall be *prima facie* evidence of such receipt and removal and of the dates thereof. All articles of food in any cold storage warehouse at the time this Act goes into effect shall, before being removed therefrom, be plainly marked, stamped or tagged with the date when this Act goes into effect and the date of removal therefrom.

529. Length of Storage Approval of Continuance—Report, Etc.

§ 8. No person, firm or corporation shall hereafter keep or permit to remain in any cold storage warehouse any article of food which has been held in cold storage either within or without the State, for a longer aggregate period than twelve months, except with the approval of the Director of the Department of Agriculture as hereinafter provided. The Director of the Department may, from time to time, upon application in writing, extend the period of storage beyond twelve months for any particular article of food, provided the same is found upon examination by the Department of Agriculture to be in wholesome condition for further cold storage. The length of time for which such further storage is allowed shall be specified in the order granting the extension. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the said Director, the kinds and amounts of the articles of food for which the storage period was extended, and length of time for which his extension was granted, shall be filed, open to public inspection, in the office of said Director. The Director of Agriculture shall have the power to order any article of food held in cold storage to be removed therefrom before the expiration of the first period of twelve months or before the expiration of any period of extension granted by him for any of the following reasons:

(1) The storage of the article of food beyond the time fixed by the Director of the Department of Agriculture in his order of removal will render such article of food unwholesome;

(2) That the person, firm or corporation storing such article of food has entered into a contract, agreement or understanding for the purpose or with the intent of fictitiously increasing the price of such article of food;

(3) That the storage of such article of food is for the purpose or with the intent of fictitiously increasing the price thereof;

(4) That the storage of such article of food tends to create a monopoly.

(5) That the storage of such article of food tends to restrain or prevent competition in this State in the supply or price of such article. Before such article of food shall be ordered removed from storage, the Director of Agriculture shall give at least five days notice in writing of his intention to make such order, and shall accord the person, firm or corporation receiving such notice a full hearing thereon.

530. Sale of Cold Storage Food Not Marked.

§ 9. It shall be unlawful to sell, or to offer for sale, any article of food which has been held for a period of thirty days or over in cold storage

either within or without the State, without notifying persons purchasing, or intending to purchase, the same, that it has been so held, by the display of a placard plainly and conspicuously marked, "Cold Storage Goods," on the bulk mass or articles of food; and it shall be unlawful to represent or advertise as fresh any article of food which has been held in cold storage for a period of thirty days or over.

531. Return of Articles Released from Storage.

§ 10. It shall be unlawful to return to any cold storage warehouse any article of food which has been once released from storage for the purpose of placing it on the market for sale. It shall be unlawful to transfer any article of food from one cold storage warehouse to another if such transfer is made for the purpose of avoiding any provision of this Act, and such transfer shall be unlawful unless all prior stampings, markings and taggings upon such article shall remain thereon.

532. Rules—Effective Date.

§ 11. The Department of Agriculture may make all necessary rules and regulations to carry this Act into effect. Such rules shall be filed in the Director's office, and shall not take effect until five (5) days after such filing.

533. Penalties.

§ 12. Any person, firm or corporation violating any provision of this Act shall be guilty of a misdemeanor and shall upon conviction be punished for the first offense by a fine not exceeding one hundred (\$100) and for the second or any subsequent offense by a fine not exceeding five hundred (\$500) or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court.

534. Interpretation of Act.

§ 13. This Act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

535. Citation of Act.

§ 14. This Act may be cited as the Uniform Cold Storage Act.

536. Repeal.

§ 15. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

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